Zahr K. Said
Associate Professor of Law
Lead Faculty Director, CASRIP
University of Washington School of Law

“A Rising Tide:
IP Norms & Innovation in Seattle’s Craft Brewing Community”

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Seattle is home to a craft brewing community with over a hundred commercial breweries. Using qualitative empirical research methods, this project studies Seattle’s craft brewing industry as an innovative ecosystem demonstrating explosive growth and intense creativity. By conducting 22 semi-structured interviews with key figures, the study examines the rhetoric brewers and owners use in describing what they do, what they feel they own and why, and the extent to which they think of intellectual property (“IP”) law as a means of viable protection. IP could provide multiple forms of protection, and it sometimes plays a role, notably with brewery trademarks and beer names. Yet informal norms govern borrowing, sharing, attribution, naming, and litigation in craft brewing as much as legal rules do; sometimes they are even more important than laws. The study is timely: the industry is witnessing a recent wave of mergers and consolidation, which has put pressure on craft brewing as a special subset within a much larger industry. These market factors make it a particularly charged time to be collecting views about craft beer and brewing. This Article is the first to identify IP norms and knowledge-sharing practices in the craft-brewing industry, and it joins a body of what I call “IP revisionist” scholarship that has gained momentum in recent years, using diverse methods to seek a more accurate and more complete picture “on the ground,” probing what motivates creators, what promotes innovation, and where IP law does and does not matter. Further, Seattle’s craft brewing scene offers a knowledge commons case study that enables analysis of issues IP law often overlooks, such as the role community plays in innovation, the mismatch between collaborative creativity and IP’s assumptions about authorship, the costs of collegiality, and the challenge of enforcing rights in communities that embrace collaboration over litigation. By describing the practices, attitudes, and norms in Seattle’s craft brewing industry, the Article undercuts the idea that creators create because IP provides the incentive to do so, and it offers ground truth about craft brewing’s extraordinary culture of innovation.
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Introduction

If you’re reading this, and you’re a beer drinker, chances are good that you have had a craft beer recently.¹ Even if you’re not, menus, grocery store shelves, highways with craft beer billboards, and other media have likely made you aware that there are that have never been this many beer choices available to those who do consume it.² In fact, there have never been this many breweries in the United States; in 2017 the number stands at around 5,300 craft breweries in operation, with another 1,500 planned, compared with 40 or fewer in the late 1980s.³ All of these breweries have humans at the helm, in the cellars, on the road, and in taprooms bringing fresh beer to customers. Craft brewing provides hundreds of thousands of jobs nationally, and it employs disproportionately more people than industrial-scale brewing (“Big Beer”) does.⁴ The American brewing industry overall is reportedly responsible for $252 billion in economic impact and nearly a million jobs.⁵

Craft beer now accounts for somewhere around 12% of overall market share of beer by volume in the United States, representing a $23 billion segment in a $108 billion market.

² The numbers alone don’t tell the full story. After all, just because there are lots of 

³ sources put the number closer to our current number:

http://datafiniti.co/craft


² Matt Egan, How to Start a Successful Craft Beer Brewery, CNN.COM (March 3, 2015) http://money.cnn.com/2015/03/03/smallbusiness/craft-beer-startup-how-to-guide/index.html (“Between 2007 and 2013, the amount of craft beer produced in the U.S. nearly doubled to 15.6 million barrels, according to the Brewers Association.”)

³ Though it can be difficult to find accurate numbers, many estimates suggest there are some approximate numbers researchers can trust. In 1985 there were around 37; Jay Gatrell, Neil Reid & Thomas L. Steiger, Branding spaces: Place, Region, Sustainability and the American Craft Beer Industry, xxx J. APPL. GEO. 1 (2017). By contrast, before Prohibition the number may have been as high as 4,000. Gatrell, at 2. Other sources put the number closer to our current number: http://datafiniti.co/craft-beer-popular-america, claiming that the number of breweries prior to Prohibition was as high as it is now.

⁴ Brewers’ Association. In 2014, craft brewers contributed $55.7 billion to the U.S. economy, and nearly half a million jobs, of which roughly a quarter consisted of employment at breweries and brewpubs.


is a small subset of the overall beer industry, its force is widely felt in the market, and its influence disproportionate to its market share. The culture and values of craft brewers nationally, and in particular communities, may hold insights for intellectual property (“IP”) scholars interested in the everyday practices of thriving business and creative communities, and curious about how participants understand their relationship to each other, and to their surrounding communities.

Craft brewing is closely connected to place: while craft breweries are lovingly producing a high-caliber product, they are often also pouring energy into maintaining, reviving, and improving their communities. Because many brewers have anchored themselves where space was cheap, thus allowing the purchase of more space for their brewing systems, breweries may be found in areas of town that were once rundown or languishing. Often, if the brewery is well-established, it has helped pave the way for revitalization of the community around it. The link between breweries, urban revival and community flourishing translates into jobs, revenues, and increased property, setting side non-economic qualities breweries might foster, like community cohesion and the pleasures associated with brewing and consuming beer collectively. Indeed, craft beer and brewing have become understood as “markers” for community thriving and urban health. One scholar of cultural geography writes that breweries “stand in as a sort of short hand for a city’s competitive ‘place-brand’” and “serve as a proxy for a community’s economic sophistication.” It has been suggested that the success of craft breweries may even be attributable to the desire to reestablish community connection and reject the monolithic sameness of national corporate culture: known as “neolocalism,” the movement to focus on place and to support local businesses allows people “to reclaim a sense of place and a distinctive landscape in the face of our globalizing economy.”

Because of the role craft brewing plays economically and culturally, policymakers and academics alike have a strong interest in understanding it. IP law is the primary domain through which law stimulates, shapes, and regulates innovation. As craft beer’s

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7 Craft brewing as defined by the Brewers’ Association excludes certain brewers still making craft beer, but now more than 25% owned by a non-craft brewer. Id. The last five years of acquisitions could thus be said to skew market share data since many beers deemed “craft” by consumers, and that are craft in every way other than recent change of corporate ownership, are not reported in the craft segment, but in the macro segment. This in turn will make craft’s market share appear smaller.
8 Evidence from interviews abounds here. **
9 Tali Arbel, Build a Craft Brewery, Urban Revival Will Come, (July 6, 2013), https://www.usatoday.com/story/money/business/2013/07/05/in-urban-revival-beer-creates-small-business-hubs/2487625/ (“The arrival of a craft brewery was also often one of the first signs that a neighborhood was changing. From New England to the West Coast, new businesses bubbled up around breweries, drawing young people and creating a vibrant community where families could plant roots and small businesses could thrive.”)
11 Gatrell, supra note 4 at 2 (internal citations omitted).
12 Steven M. Schnell and Joseph F. Reese, Microbreweries as Tools of Local Identity, 21 J. CULT. GEO. 45, 46 (2003).
13 Gatrell, supra note 4 at 2.
importance grows, it becomes increasingly surprising that no studies of craft brewing’s innovative qualities have yet been conducted by IP and innovation policy scholars.

Consider as evidence of that innovativeness such factors as the explosive increase in number of breweries; the creation of new technologies of distribution and canning that have revolutionized the business and consumption of beer; the rise of new sales mechanisms including online and app-driven purchasing; and above all, the unprecedented brewing experimentation with diverse flavors, styles, ingredients and traditions.\textsuperscript{14} Brewers are pushing the frontiers of science and of entrepreneurship, with innovations in agriculture, biology, chemistry, manufacturing, business, and branding, and the field deserves the special focus of those who study innovation and IP.\textsuperscript{15} Like cuisine, fashion, and other areas IP scholars have explored, brewing is a creative activity that requires skill, experience, creativity, and experimentation: “[b]eer is something created; it is a recipe, constantly tweaked. More hops; different hops. New yeasts; a little bit of this, a little bit of that. New styles [are] being created constantly, using herbs, spices, fruit, coffee, barrel aging and more.”\textsuperscript{16} As noted, the innovativeness extends beyond brewing to business practices as well. In light of craft brewing’s innovative features, there are likely rich veins of information and no shortage of pressing legal issues for IP and innovation theorists to explore.\textsuperscript{17} Additionally, that multiple forms of IP law could be used to protect craft brewers’ interests underscores that the domain of craft beer is ripe for theorization by IP scholars. In spite of this, craft brewing has been little discussed in legal scholarship generally, even while being extensively studied by economists, geographers, sociologists, anthropologists and historians.\textsuperscript{18} IP scholars in particular have yet to catalog this explosive growth of creative and scientific activity, hence we have not begun to understand the factors that contribute to creating the contemporary brewing renaissance, let alone beginning to explore qualitatively the attitudes and norms that make the community both innovative and cooperative.


\textsuperscript{15} The History of Beer in Seattle, SEATTLE MAGAZINE (September 16, 2011), http://www.seattlemag.com/article/history-beer-seattle


This Article begins to fill that gap. Craft brewing’s innovative spirit is underpinned by a commitment to collegiality and collaboration that often makes beer even better, but that confounds standard IP theories of competitive markets and incentives. As the number of breweries rise, basic economic theories might predict increased competition for market share reflected in business practices to undercut competitors, and the most basic intellectual property theories would predict a turn toward exclusivity and enclosure rather than sharing and openness. Yet in the case of craft brewing, at least in Seattle at the moment, those theories would be wrong. Instead, Seattle’s craft brewing industry is full of examples of breweries helping each other, sharing knowledge and resources, attempting to speaking only good, not ill, of each other, and generally promoting an environment of intragroup collaboration even while they continue to compete for the same consumers. They seem to live the motto, “all for one, and one for all.” In fact, it is very common in the industry to hear the phrase: “a rising tide lifts all boats.” Underpinning the entire system are trust, collegiality, and the view that competitors help themselves, and the whole industry, when they help each other.

These assertions find support in a set of 22 formal semi-structured interviews I conducted in and around Seattle, Washington, from April 2016–September 2017. My interviews provide rich evidence of a community characterized by sometimes-astonishing openness, skill, generosity, and energy. By providing ground-truth to the practices and attitudes of craft brewers in Seattle, these interviews offer glimpses into ways in which community-wide innovation can thrive, and they highlight the crucial role of knowledge-sharing in that innovation. The interviews provide evidence, in other words, that craft brewing in Seattle operates as a kind of knowledge commons, with frequent knowledge-sharing and collaboration, and informal norms that govern behaviors more than law does. It also picks up the thread of several important interventions in IP scholarship that emphasize the importance of understanding what creators—and communities—actually need, and that emphasize the role IP can play in enriching the quality of life.

A knowledge commons is a form of “institutionalized community governance of the sharing and, in some cases, creation of information, science, knowledge, creative works, data, and other types of intellectual and cultural resources.” The knowledge commons framework is helpful where a community’s behavior and norms do not hew to either of the two poles of IP theories about property: exclusivity (where knowledge is either owned exclusively and managed through IP rights), or openness (where knowledge is

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19 Chris Herron, Watch the Hands, Not the Cards: The Magic of Megabrew, http://goodbeerhunting.com/blog/2017/5/5/watch-the-hands-not-the-cards-the-magic-of-megabrew (celebrating “the culture of collaboration over competition. Being small and independent is not a requirement to partake in the collaborative spirit, it just takes caring about what is good for the beer industry in conjunction with what is good for your brands.”); Martin Johnson, Collaborative Brewing Is Heating Up in the Beer World, EATER.COM (June 5, 2015)(“Many of the most interesting beers on the market today are a result of two or more breweries teaming up to produce one stellar beverage.”)


21 Silbey, Sunder, Murray, Piper & Robertson, Rosenblatt.

22 Brett M. Frischmann, Michael J. Madison and Katherine Strandburg, Governing Knowledge Commons, in GOVERNING KNOWLEDGE COMMONS (Frischmann et al., eds., 2014) at 1, 3.
openly used and accessed, through contracts, creative commons licenses, or other means of governance, including dedication to the public). Seminal scholarship by Brett Frischmann, Michael J. Madison, and Kathy Strandburg, proposed the knowledge commons framework as a way to understand innovative environments in which collective use of resources, and shared governance, challenged the individual-owner assumptions of standard IP doctrines. Accounts of innovation that made assumptions based on IP’s economically reductionist understanding of incentives, rewards, and exclusivity were inapposite. Specifically, IP was inadequate to describe and analyze environments where sharing made more sense, where pooling resources was the norm, or where an informal mix of norms and law suited participants better than law alone. These scholars drew on the insights of Elinor Ostrom and others who had used the idea of the commons, as applied to real property and competition among lobster fishermen, to illuminate informal governance mechanisms and to develop a research framework that could ask and answer better questions.

Using the knowledge commons framework tees up questions about the interaction between formal law, informal norms, and community decisions about which form of governance applies, and when. Consequently, another important part of understanding this innovative community involves describing and interpreting its norms, in a mode similar to some of the existing law-and-norms scholarship. Numerous norms emerge from my interviews, and they illustrate a pattern of informal community governance that misaligns with IP’s formal rules and that illustrates how non-legal values need to be better understood by scholars of IP and innovation. As I interviewed participants and gathered evidence outside interviews, I sought answers about the innovation I was seeing throughout the industry. What makes this innovative ecosystem thrive as it does, and in the ways that it does? What can scholars learn from craft brewing about what promotes innovation, and what matters most to innovators? What do business strategies, IP rights, and human elements like trust, friendship, connection, empathy, and loyalty have to do with each other in promoting an ecosystem of optimal innovation? Only by shedding outdated and inaccurate assumptions about what drives and helps creators, and by exploring the innovative ecosystem more holistically, can these questions be addressed.

Through extensive interviews within Seattle’s craft-brewing community, this Article provides “ground truth” that informs legal scholarship on creativity and innovation. In so doing, it also provides additional data points in what I am calling, somewhat loosely, the IP revisionist movement in legal scholarship. I define IP revisionism to include work that rejects reliance on simplistic law-and-economics frameworks, and that seeks more

24 Id. at 659 [Constructing Commons in the Cultural Environment, 95 CORNELL L. REV. 657, 659 (2010)](using the term “cultural commons,” which the authors later abandon in favor of knowledge commons in their book, Governing Knowledge Commons (2014)).
25 Id.
26 Id. at 675-689.
27 See infra Part IV at p. __.
descriptively accurate stories about creativity and innovation in action. Included in IP revisionism is a normative commitment to taking seriously values that may not always be commensurate with IP laws as currently structured, or as theorized in the dominant, utilitarian approach to IP.\textsuperscript{28} Whether IP revisionists focus on distributive justice, human flourishing, or other values, they share an interest in revisiting assumptions about creators and creativity, resisting the default to law-and-economics frameworks for IP, and conceptualizing a more holistic, pluralistic ecosystem for innovation.

In that spirit, this Article uses qualitative empirical research methods to tell the stories of craft brewing industry participants so as to describe aspects of their lived experience. It examines the question of whether and how brewers consider beer they produce to reflect their IP at all, and how brewers use legal protections, industry custom, or other formal or informal mechanisms for shared governance for their community. It also tells the story of a knowledge commons whose sharing and governance norms shape an ecosystem of great creativity and collaboration. Seattle’s craft brewing industry provides a model for innovation theorists interested in studying how community membership can stimulate and support innovation, and it adds ballast to the larger IP revisionist movement.

Part I provides background information on craft brewing, and on the decision to use Seattle as a site to study craft brewing’s innovative culture. Part II offers a thick description of local craft brewing: I discuss the background, daily routines, and practices of craft brewers in Seattle, offering as evidence the stories industry participants told in our interviews. Part III identifies some of the attitudes and norms in the industry, with respect to sharing, ownership, business, and law. Part IV discusses the IP the implications of these norms, and uses the knowledge commons framework to reflect further on some of the fundamental values and factors that seem to promote innovation and collaboration in Seattle’s craft brewing industry. In the Appendix, interested readers will find a description of the study’s methodological structure and choices. It also describes the data gathering I did beyond conducting formal interviews.

Part I. Craft Beer, Seattle and the Craft Brewing Revolution

Washington is experiencing a craft beer boom, and Seattle is at the heart of it. While there is no question that Washington’s brewing industry is highly developed throughout the state, there may be some reasons to think that Seattle’s brewing culture has some distinct and unifying elements that make studying it especially rewarding. In this Part, I provide background information that bolsters the case for using Seattle as a site to study craft brewing’s innovative culture. Ultimately, the point is not to make definitive claims to either Seattle’s uniqueness or its representativeness, but instead to equip the reader with information that will help them assess the information the study provides. Certain features of the business and cultural landscape help make sense of what interviewees report about craft brewing in Seattle, shedding light on their practices and attitudes. To

\textsuperscript{28} Id. [See infra Part IV at p. ___]
understand more about Seattle’s craft brewing scene in 2017, it may be helpful to begin a few years earlier, and with a brief definition.

A. The Culture of Craft Beer

Craft beer is typically defined in terms of size (under 6 million barrels per year); independent ownership (less than 25% ownership stake by non-craft brewer); and brewing philosophy (use of traditional methods and grains, not corn or other cheap substitutes). Craft brewing is defined both by the industry standard—small, independent, and traditional—but also by a spirit of camaraderie and kinship. In brief, craft brewers use traditional methods and smaller batches, whereas “Big Beer,” or the multinational beverage conglomerates who dominate the field globally, engage in mass production and often prioritize price over process. Beyond these defining features, craft beer is fiercely committed to independence and to openness within the community. Finally, craft stands at odds with market practices that put profit before community, or that seek to maximize one participant’s place in the market at the expense of the community as a whole.

A sharp dividing line separates big corporate beer production (“macro”) from smaller-scale artisanal craft brewing (“micro”). Sometimes referred to as the “beer wars,” the divide is economic and cultural, but it is also increasingly fraught as big beer buys craft breweries as part of a larger corporate strategy to win market share. In 2015, Anheuser Busch (“AB InBev”) bought the beloved Seattle craft brewery, Elysian Brewing Company, an event that reverberates throughout my interviews, demonstrating considerable impact on the community. That same year, AB InBev aired an advertisement during the Super Bowl that exemplified, and probably deepened, the macro-micro beer divide, stirring up controversy locally and nationally.

The ad, “Brewed the Hard Way,” mocked both drinkers and makers of craft beer, suggesting that they were fussy, attracted to beer flavors that were bizarre or precious, like “pumpkin peach ale,” and contrasting AB InBev’s own beer as straightforward (“not brewed to be dissected”) and classic (“golden suds”). The ad showed a glimpse of a hipster (thick mustache, retro glasses) with his nose in a glass of beer, sniffing pretentiously, and the camera work moved rapidly through many shots of powerful machinery which, along with a pounding soundtrack, seemed to symbolize strength, anti-intellectualism, and industrial might. There were no images of the brewers who make Budweiser, but several pictures of Budweiser’s historic branding, with labels and logos from its earliest ad campaigns.

Pronouncing itself “proudly a macro beer,” it declared that it makes beers

29 Brewers’ Association Definition, https://www.brewersassociation.org/statistics/craft-brewer-defined/
30 Id.
32 Acitelli, [Winning the Revolution], supra note __.
33 “Brewed the Hard Way” can be viewed here (last accessed 8/21/2017): https://www.youtube.com/watch?v=yyVgQ_38vwx. The text of the ad reads: “Proudly a macro beer. It’s not brewed to be fussed over. It’s brewed for a crisp, smooth finish. This is the only beer Beechwood aged
“for people who like to drink beer.” AB InBev’s ad was aimed at bolstering its brand in the face of weak sales, and at making fun of “the overwrought pretentiousness that exists in some small corners of the beer landscape … around beer snobbery.”34 Somewhat paradoxically though, “Brewed the Hard Way” followed a year of mergers and acquisitions in the industry, with Big Beer buying craft brewers in order to take advantage of craft’s growth, innovativeness, and cachet among consumers. AB InBev was at the forefront of this movement.

The ad was widely seen and hotly debated.35 SuperBowl ads are often “the star of the show,” famous as cultural touchpoints that reflect the zeitgeist, spur copies, parodies, and controversies, and generally seize on the fact that they are embedded in one of the most important moments of American television viewing each year.36 Super Bowl XLIX, in particular, featuring the New England Patriots and the Seattle Seahawks, became the most-watched event in the history of American television.37 Yet this ad was received with puzzlement, and in some quarters, anger. For one thing, AB InBev had been trying to win the 75-million strong millenial market, yet was clearly mocking it here, suggesting a thoughtless or self-defeating marketing campaign.38 For another, by spending $9 million on airtime during the Super Bowl, AB InBev came across as desperate and defensive to some, rather than confident, undercutting its own message about its pride in its “macro” status.39 Finally, it was downright bizarre: because of its recent purchase of Seattle’s Elysian Brewing, which had been brewing at least two well-respected pumpkin beers, it seemed as though it was unintentionally deriding itself or a brand within its corporate family. It was an ad that would target loyal craft beer drinkers in Washington state and Seattle, many of whom were passionately rooting for the Seahawks, too. At a minimum, it seemed like poor brand portfolio management, indirectly mocking Elysian’s pecan peach pumpkin amber, “Gourdgia on My Mind,” and “making a difficult situation even more painful” in the words of one of Elysian’s founders, a reluctant participant in Elysian’s sale, and a giant in Seattle’s craft brewing scene, Dick Cantwell.40 This

since 1876. There’s only one Budweiser. It’s brewed for drinking. Not dissecting. The people who drink our beer are people who like drinking beer. To drink beer brewed the hard way. Let them sip their pumpkin peach ale. We’ll be brewing us some golden suds. This is the famous Budweiser beer. This bud’s for you.”

37 Acitelli, supra note 1.
39 Acitelli, supra note 1.
40 Id.
mocking is not something AB InBev is likely to take lightly given their brand equity: the Budweiser brand is valued above $20 billion, making it the 25th most valuable brand in the world. Harm to the Budweiser reputation costs the company dollars.\textsuperscript{41}

The moment captures what has come to be a kind of culture war between macro and micro brewers, between giant industrial behemoths on the one hand, and craft brewers of all sizes on the other. It was such bad public relations for big beer, even MillerCoors (since that time merged with AB InBev) tried to distance itself from the message, tweeting: “We believe each and every style of beer is worth fussing over.”\textsuperscript{42} Oregon craft brewer Ninkasi released a mordant parody of the ad, “Brewed the Easy Way,” which emphasized many of the values that shape contemporary craft brewing.\textsuperscript{43} In marked contrast with the AB InBev ad, Ninkasi depicted many people involved in the process, it did not show its own branding, and it emphasized community over machinery. Ninkasi ironized AB InBev’s message that there were “hard” and “easy” ways to brew beer, humorously framing its team as clumsy (tripping and dropping a box of beers), lazy (lying on a couch next to brewing machinery and throwing handfuls of hops at a large kettle), and clownish. It poked fun at the idea that beer might be drunk for reasons other than its good taste, with a shot of someone pouring beer on his head. In short, it exposed AB InBev to ridicule and mockery, even including puppies at the start of the ad to invert the idea that beer had to be serious, masculine or powerful rather than playful and innocent. Other brewers, and many consumers, similarly mocked AB InBev, online, and in taprooms through their beer lists. One of the best known craft breweries in the Midwest released two cases of Pumpkin Peach Ale, calling it “a fuck you to Anheuser-Busch because they sent us a fuck you.”\textsuperscript{44}

The controversy over this ad, and the beer wars more generally, give some credence to the idea that craft brewing represents a major threat to settled corporate interests, in volume of beer produced as well as in innovativeness and consumer preference. Certainly that AB InBev has spent hundreds of millions of dollars acquiring small craft brewers lends further support to the notion that craft threatens big beer.\textsuperscript{45} Every community where an acquisition like this has taken place, the ripple effects are palpable, and Seattle is no exception, making it an especially interesting place, and time, to collect the attitudes and norms of local craft brewers.

B. Seattle as the Epicenter of Washington Craft Brewing

\textsuperscript{42}Id.
\textsuperscript{43}Ninkasi’s “Brewed the Easy Way,” https://www.youtube.com/watch?v=ZEKqLxtjwDQ (last accessed 8/21/2017)
\textsuperscript{44}Acitelli, supra note 1.
\textsuperscript{45}John Kell, \textit{Big Beer’s M & A Bender} (January 26, 2016), http://fortune.com/2016/01/26/big-beer-craft-beer-merger-acquisition/
With $1.65 billion in annual revenues, Washington State is sixth in the nation for craft brewing’s economic impact on its state, and it employs nearly 15,000 people generating $656 million in labor income. Since 2011, roughly forty new breweries a year have opened in Washington state (net of any that may have closed during that time). Washington State is second or third in the country for number of breweries with somewhere around 336 craft breweries in operation in September 2017. In the greater Seattle Metropolitan Statistical Area alone, there were 174 breweries as of May 2017, making Seattle the city with the most breweries of any in the U.S. That said, with nearly 200 breweries in operation locally, the study felt too large to be feasible given the length and detail of the interviews to be conducted. Roughly 55-60 breweries operate within Seattle’s city limits, and this provided a better study size for my purposes. While the concept of “city limits” provides a somewhat artificial boundary line, given that brewers on either side of it share a similar culture, are often in dialogue, and move fluidly back and forth over that line, it nonetheless provided a manageable outer boundary for my study.

Agricultural Innovations. Seattle’s innovative brewing culture owes at least some debt to its proximity to the agricultural bounty of Eastern Washington and especially the Yakima Valley, which has become a global leader in hop production. Washington is also one of the five biggest barley-producing states in the United States. Washington State, a significant source of hops since at least 1865, has more recently come into prominence as one of the world’s top producers of the most valuable and interesting hops currently used in brewing. By 2010-2012, Washington State’s production was consistently around 75-80% of the national total (and a quarter of the world’s hop supply), measured by acreage. Because craft brewing uses a greater number of hops

47 https://www.brewersassociation.org/directories/breweries/
48 The Brewers’ Association currently lists Washington with around 336 craft breweries and 404 if non-craft breweries are included. Depending on the source, Washington is tied with or just after Colorado, with around 330-350, compared to California’s 623. See https://www.brewersassociation.org/directories/breweries/ but cf. http://datafiniti.co/craft-beer-popular-america/
50 Brewers’ Association.
53 MICHAEL JACKSON, ULTIMATE BEER (1998) at 11 (referring to the importance of the Pacific Northwest’s hops) and 15 (making special mention of Yakima Valley in Washington).
54 http://www.seattlebusinesmag.com/article/head-class-craft-beer-puts-spotlight-washington-hops; Jackie Smith, Sniffing out Yakima Valley Hops, Beer Lovers Can Hail Plant That Flavors Ale
overall, more than half of these Yakima hops are being used by the craft beer market (then a 10 percent segment).\textsuperscript{55} Being closer to this hop-farming region has helped Washington brewers form relationships with certain farmers, and at least one Seattle brewery is known for a tradition of hop-picking parties, after the owner visits the hop farm himself, returning with a truckload of hops that fans and friends will then help pick.\textsuperscript{56} Washington state’s agricultural bounty has been part of what has helped Seattle’s brewing culture innovate, and grow.

If part of the story of Seattle’s craft brewing innovativeness connects to the bounty of local hops, another part connects to the shortage (or purported shortage)\textsuperscript{57} of local hops, what one reporter has called the “Hop crisis.”\textsuperscript{58} As craft brewing grew, demand for hops from Washington—mainly from Yakima Valley—grew so high, some brewers would find themselves on wait lists for certain varieties on which their brewing had become dependent. Others, including some interviewed for this study, describe the difficulty and uncertainty involved in using particular hops in a beer they make, without knowing whether they will continue to be able to get that hop.\textsuperscript{59} A natural disaster may have played some role in changing the calculus of supply and demand for Washington hops. In 2006, a massive fire raged for days, destroying two million pounds of hops and wiping out what was at the time 4% of the total hops supply for the United States.\textsuperscript{60} To be sure, there was a brewing revolution underway already, but this devastating loss caused Washington farmers to begin experimenting with new varieties as a means of recovery. Responses to the fire helped spur a shift in paradigm with respect to brewers’ hop selection and recipe creativity. Setting aside weather-related phenomena, there is another important factor at work in creating the perception of a hop shortage.

Manipulation of the hop market nationally and globally by macro beer has put additional pressure on the hop harvest in Washington state (though in this respect, Seattle brewers do not necessarily face unique concerns, and they may be better off than other brewers nationally).\textsuperscript{61} By controlling entire crop harvests in Oregon and most recently in South Africa, AB InBev has caused marketwide contraction in supply and correspondingly high demand for the remaining crops available, to the consternation of many craft brewers.\textsuperscript{62}

\textsuperscript{55} Glover, \textit{supra} note __.


\textsuperscript{57} Interview #8 (discussing with skepticism the hop shortage).

\textsuperscript{58} Dewey, \textit{supra} note __.

\textsuperscript{59} Interviews #15, 8, 20.

\textsuperscript{60} Dewey \textit{supra}, note __ (“…because the fire disproportionately hit this type, some brewers began experimenting with the remaining high-aroma hops, a switch that put Washington farmers at the forefront of a transformation to specialty hops that has sparked explosive demand for our state’s unique hop varieties.”)


Certain practices, including hop contracting, rather like other crops and futures markets, developed to help increase predictability, but overall, the market remains somewhat uncertain for many brewers since many lack the means to contract for hops several years out.\textsuperscript{63} Agricultural supply and demand, and competitors’ manipulation thereof, unquestionably put pressures on farmers and brewers that forced certain innovations. In turn, the rising costs of hops, and the changed palates of consumers, encouraged brewers to engage in experimentation with less traditional styles, and with variations on their hop profile.\textsuperscript{64}

**Stylistic Innovations.** A wholesale shift in brewing methods and attitudes helped bring the West coast version of the India Pale Ale (“IPA”) to national and international prominence, based in large part on distinctive hops from Washington state. Along with California and Oregon, Washington state has played a significant role in the brewing renaissance responsible for popularizing the “West Coast IPA,” and cultivating consumers’ preference for a distinct and aggressively hopped style. Considered “the beer that started it all,” the IPA has risen rapidly in popularity over the past two decades, and many interviewees describe their consumers’ preferences as trending towards IPAs above all else.\textsuperscript{65} Seattle brewers often reported that a subset of their consumers come in to the taproom, barely look at the taplist and say, “give me your IPA.” The style reflects the unique brewing culture of the west coast, launched in 1965 when Fritz Maytag bought Anchor Steam and today’s current craft revolution slowly began, with his Anchor Liberty Ale, what one beer historian called “the urtext” for the American IPA (though it did not use that style name).\textsuperscript{66} The first American brewery to release a beer named an IPA was Yakima Brewing & Malting Co. in Washington in 1983, and it reflected its owner, Bert Grant’s motto: “all beers should be hoppiest.”\textsuperscript{67} Other beers, notably from California, followed suit, and in the decades since the IPA has become one of the nation’s most widely consumed styles.\textsuperscript{68} The IPA in 2017 can be analogized to a musical fugue; the first arose contrapuntally, as an alternative to big beer’s pale fizzy lagers, and now there are many variations on a theme with some of the same central notes: distinctive hops typically from the Pacific North West, higher bitterness, and more flavor. Hence beyond the number of breweries, there are reasons to think that Seattle’s reputation for beer has to do with its connection to a long-trending style of beer which features local hops and has helped shape tastes across the country.

**Seattle’s Brewing Ethos.** In addition to being economically significant, Seattle’s craft brewing industry is highly skilled, collaborative, and community-oriented. There are hard-to-measure factors such as creativity, skill, and passion for which Seattle’s craft beer

\textsuperscript{63} Interview #8.
\textsuperscript{64} Id. [Interview #8].
\textsuperscript{65} Brown, *The Rise and Rise of Craft Beer*, supra note __; and Interviews #15, 9, 21
\textsuperscript{68} Id. At 147.
scene can probably lay claim to being among the top ten most important and innovative brewing communities in the United States at present—and in fact, it is considered a top three beer tourism destination. The late British beer critic, Michael Jackson, arguably the world’s leading expert on beer at the time of his death in 2007, attested to Seattle’s importance, and under-recognition for its sophisticated brewing profile. This innovative drive can be observed in just about every neighborhood in Seattle, and in most beer retail locations throughout the city. It is visible in community gatherings at breweries, brewer-hosted sporting events, political fundraisers, non-profit fundraising, and cultural events, and it is perceptible in the dollars, and jobs, the brewing industry has generated in Washington state.

Seattle brewers are also unusually collaborative, and generous in the spirit of their values and mission. They prize local ingredients, they cherish their surrounding communities and the opportunity to play a role therein, they appreciate excellent craftsmanship, and they display awareness of both the hard work and the luck the job affords: they are brewing beer for a living! Or perhaps on their way to doing so; making a living off brewing takes time. They are committed to helping each other through thick and thin, whether through illnesses, fires, theft, bad luck, or other constraints. They will take time out of busy, 80-hour work weeks to teach others through demonstration, collaboration, or dialogue. They will point each other to the most helpful resources they have used. They often share recipes. In their rhetoric, and in their actions, craft brewers in Seattle are committed to helping each other get better at what they do.

Seattle’s Distinct Location. One critic suggested that Seattle’s pub culture helped spawn its craft brewing scene: like England, the weather encourages beer-drinking. It may also be that the city’s strength in the coffee and wine industries historically helped local entrepreneurs, who could use their acumen in agricultural commodities, manufacturing, bottling, distribution, retail, and service to launch and grow the fledgling beer market. It may also be the case that Seattle’s being home to many powerful tech companies who are contributing to rapid population growth and increasing the demographic of craft consumers is increasing Seattle’s prominence in craft brewing. Many of Seattle’s brewers begin their businesses equipped with a science background, a former career in

69 Brewers Ass’n webpage.
71 [youtube]
72 Multiple interviews, and community beer news.
73 Multiple interviews.
74 Interview # 2 (distinguishing Seattle’s brewing community as unusually open and generous).
75 Interview # 7, 14, 21
76 Interviews # 5, 6, 15, 13, 13, 22
77 Rather like Bend, Oregon, the consumers fit craft brewing’s profile: they are tech-oriented, bearded (a term multiple interviews actually use), perhaps geeky, tinkerers and experimentalists who may have science and/or home-brewing experience themselves. Hindy supra note __, at __ (discussing Bend’s consumer base). Multiple interviewees discuss the high level of beer education of local consumers. Many of them also mention that Seattlites have money to spend on beer, a non-trivial factor in the success of a luxury product like craft beer, which is available at a much lower price-point in its macro, non-craft form.
tech or engineering, or other experience working at a global company headquartered locally, such as Amazon, Boeing, Microsoft, or Starbucks, to name a few, suggesting that Seattle’s business backdrop might not be irrelevant to the composition of its craft brewing industry. Many factors make Seattle ripe for study: the number of its breweries, its more than three decades in the craft beer industry, its urban growth and the composition of industry participants.

Part II. A Thick Description of Craft Brewing in Seattle

This Part sets out to describe aspects of the lived experience of Seattle’s craft brewing industry, offering evidence drawn from the stories that unfolded during my interviews. Heading into these interviews, I wanted to find out more about the people who make up this industry. Where had they come from, professionally, personally, and geographically? How long had they been brewing, or been interested in beer? Now that they are in the industry, what do they spend their time? I sought basic information about how a typical day would go, inquiring into banal things like time spent on email and phone errands, versus with customers, on the road, or in the cellar. I asked about how they had acquired their knowledge about brewing and the industry, and how they maintained that knowledge. What emerges from my interviews is a picture of an energetic and generous community, many of whom have professional experience in big companies, or scientific education or training, and most all of whom possess deep passion for their work, respect for others in their community, and no fear of long hours. Brewers and owners alike speak of the hard work, the stamina it requires and the long-delayed (or missing) financial rewards. Most notably, perhaps, is the extent to which brewers described sharing and collaboration as central to their professional lives. In this Part, I discuss the background, daily routines, and practices of craft brewers in Seattle, with the goal of providing a snapshot that reflects the stories industry participants told in our interviews about how they work, how they learn, how they work together, and why.

A. Background

Most of the brewers I interviewed had years of home-brewing experience as amateurs before entering the business. There were of course exceptions; some people came to brewing from cuisine or hard science, or other industries that lent themselves to picking up brewing quickly, and some apprenticed and worked their way up as cellarers and then assistant brewers, but were professionally in the industry from the very start.79 But these apprentice-style brewers were the exception. The great majority of brewers in Seattle came to brewing professionally having done so as amateurs for years beforehand. Most did not expect to become professionalized, but after years of enjoying their hobby, and having friends and family declare their beer excellent, may have decided to make a go of it. Some received accolades or awards early on; others left careers that they had decided did not fit them, or their values, the way the idea of creating beer, or creating community,

79 Interviews # 2, 3, 8, 9, 12, 18.
Many in the industry home-brewed but now are in the industry in another capacity, such as sales or marketing. There are many scientists in the community, some with bench science backgrounds who left labs, drawn to the opportunity to be valued for contributions to biology and organic chemistry with a lower pressure, higher-collegiality environment. Some have speculated that this is a good way for women to enter the field, in fact since, as the next part discusses, certain obstacles to women’s participation in brewing remain.

A good number of brewers or owners in the Seattle-area craft brewing industry came from a corporate background, with large companies whose focus on engineering or technology may have provided especially good training for a field in which getting the science right is sort of a sine qua non. There are also those who came from Big Coffee, and left because the coffee industry in Seattle is not actually reputed to be a collegial place. While I cannot state whether that claim is accurate, it is one that I have heard repeated often—coffee in Seattle is cutthroat. If brewers came from that business, they brought with them some understanding of retail, distribution, perhaps bottling, and the importance of certain sorts of secrets: roasting curves are, for instance, extremely proprietary at some coffee companies. If the rumors are true, and coffee is as unpleasant or mean-spirited an industry as those who have left it report, it may also be that the commitment to collegiality in brewing was something they not just welcomed but wished to propagate and protect.

The ex-professional class forms a substantial subset of Seattle’s craft brewers and owners; over half of my interviewees either were formerly employed by big companies, or were partners with someone who had been. A few had law degrees, and some had practiced before escaping to hoppiier shores. A number of the ex-professional set could talk about academic issues; one spoke passionately about cultural anthropology and held forth on the history of brewing in at least one different culture. Another could speak with erudition about the history of ideas and science, and connect it to craft brewing as a vocation. There are important class implications to explore in further work; one theme in these interviews is that people can become brewers when they have significant savings from a prior career; they may be able to buy a very large building for the purpose of building community with their brewery, but doing so might rely on considerable financial success at say, Microsoft.

Some brewers and owners came up through the restaurant or service industry, and they are erudite in different ways: knowledgeable about the nuances of brewing techniques, what made things good, or consistent, or both. These understand the service sector

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80 Interviews #15, 16, 19.
81 [Informal Interview with recent Ph.D. in biochemistry]
82 Interviews # 4, 10.
83 Interview # 9.
84 Interview # 8.
85 Interview # 14.
86 Interview # 18.
especially well and speak of the importance of relationships with consumers and the
value of distribution and retail networks. Often, those who have been in brewing the
longest have deep personal connections to the craft, like the person who recalled hearing
about brewing from their earliest days at home:

I guess I [was] raised on stories, even [about] Prohibition. … Grandma
used to make, uh, bathtub wine [laughs], beer… Uh, even had some uncles
that would run moonshine across the Missouri river. So [brewing] goes
way, way back. Um, I don’t know. I just… fell in love with the…art and
the science of it… watching, you know, that there are so many little
nuances to it and how you can build something from nothing.87

This brewer finds a meaningful legacy handed down to him through his family history in
the stories he heard while growing up, but he connects his own pleasure to the complex
and satisfying work itself. Despite the many different backgrounds—and the class and
capital implications of those—brewers come to professional craft brewing with
dedication to making excellent beer, and to the idea that the product they make, and the
process they vigilantly master and then spend a lifetime refining, will produce something
bigger than a pint of beer. Almost every one of my interviewees, whether they are
brewers are play a different role, speaks of the pleasure of creating something delicious,
and building a community of drinkers who will enjoy it.

B. Daily Routines and Practices

My first questions asked brewers about their daily routines. The first commonplace was
that as small business owners—or as head brewers—there was no one typical day. If it
was a brewing day, sure, there was a routine, a schedule, and a timeline. But my
interviewees brewed anywhere from two to three times a month to that often a week.
Their other days were spent on “everything else!”88 That might have meant emails: hours
and hours of emails managing accounts, dealing with sales representatives (or acting as
sales reps themselves), communicating with consumers, and yes, posting on social
media.89 At least one reports spending over four hours a day on emails.90 On most days,
there are levels to check, processes to follow, and lists to
check off.91 Some describe
detailed means of list-making to ensure that the tasks can be delegated and completed,
and to keep the organization coordinated.92

Almost all interviews describe a big variety of tasks and some cite that variety as a chief
incentive for picking this career, or for the satisfaction it delivers.93 Those that do have

87 Interview # 2.
88 Interview # 22.
89 Interviews # 5, 6, 7, 10, 14, 17, 19.
90 Interview # 17.
91 Interviews # 2, 5, 12, 14.
92 Interview # 12.
93 Interview # 16, 19.
routines, such as checking chemical levels, do so as a ritual or program within a larger, constantly changing set of things that need to be done. Anything can arise as a problem that needs immediate attention, whether it’s chemical, mechanical, or business-related, like demand outstripping inventory, accounts needing resolution and production schedules misaligning with distribution contracts. Many interviewees describe the need to fix things: all things break down, at some time, and something is broken at pretty much all times. They sometimes describe relishing the task of learning how to do something new (figure out toilet plumbing, master a particular kind of wiring, modify some system to accommodate a brewing need or physical constraint of the layout). Some describe satisfaction at the process, whether the job is borne out of necessity and frustration or curiosity (how can I make this better), or because they possess mechanical acuity and can figure out how to solve a problem. Actually building or tweaking things by hand is among the things many report doing regularly. Many brewers are tinkerers and puzzle-solvers, and this theme of solving for ingenious (or workable, or cost-effective) solutions emerges in my interviews often.

Physical Labor. Brewing is a labor of love, with one’s body on the line. Many refer to the enormous amounts of cleaning required. One estimates that “90% of my job is stacking and cleaning” (and this is a head brewer, not someone at the bottom of the brewery’s food chain). At least one other also offers the same: You’re – you’re working really hard, and you’re doing a lot of cleaning. [Laughs] It’s not very glamorous. You … got to spend 90 percent of the … day cleaning stuff, you know?”

When I asked one brewer about it (“I hear a lot about the cleaning…”) they assented with a small laugh: “Yeah, that’s mostly what it is.” Because cleanliness translates into consistent, safe, and delicious product, there is a note of pride detectable as brewers talk about just how much cleaning they have to do; the flipside is that they report being able to detect off-flavors in other breweries at times that make them wonder about cleanliness there. The cleaning is no joke; nor is the lifting, carrying, and generally moving around for much of the day. Some jobs in the field still list being able to lift a 145-pound keg as a required qualification; after hearing reports of this, I confirmed it for myself in a handful of recently posted ads I found online, for jobs in Seattle breweries. Without citing interviews that might compromise anonymity, I can say that some women believe this to be unfair, rather like a glass ceiling, while other women who have worked hard to develop the strength to meet those requirements feel the requirement is fair because brewing is a highly physical endeavor. The point made by those who believe it is unfair is that many men who lack such strength make their way into the industry anyway, and adapt by using tools—a dolly, a forklift, or even joists and mechanized lifts in larger

94 Interviews # 5, 14, 16.
95 Interviews # 5, 14, 16, 19.
96 A pioneer in the field, founder of Sierra Nevada’s Ken Grossman, speaks passionately in his memoir about his love of taking things apart and putting them back together, starting from his very earliest memories. BEYOND THE PALE (2013) at __.
97 Interview # 2.
98 Interview # 7.
99 Interview # 12.
100 Interview # 12.
breweries. Moreover, they point out that injuries are frequent because of the constant lifting, and even if someone can lift a 145-pound keg doesn’t mean it’s good for them to do so.101

Physical parts of the job are a defining feature, whether one uses adaptive tools or not. Consider the way one woman talks about the labor involved, and the notoriety of one long-established Seattle brewery with a tricky physical terrain:

Interviewee: You have to—I mean, the grain bags weigh 55 pounds each … and then if you’re working at Hale’s you have to take those upstairs … up, like, three flights of stairs.

Interviewer: Fifty-five pound bags?

Interviewee: Yeah, so I mean…—there’s that. The kegs weigh 150 pounds, um, and you have to move those around, sometimes lift them and stack them. Um, so there—there’s just a lot of physical work.

Because of this work, and the need for safety on the brewing floor, brewers need to wear particular clothes, and shoes. Women dress in a very different way than they might in the taproom, and occasionally get comments about that.102 The job’s sheer physicality also conditions when women—or people unable to lift heavy weights, which I am told often overlaps with women in practice—can work. If closing, shiftworkers need to be able to lift, stack and replace kegs at some breweries, and they may have shelving systems to navigate that make lifting even harder.103 Brewing, and the sociology of bars and taprooms, make non-negligible demands on the body, and normalize the need for particular body types.

The brewer’s body is actually an important site: before standardized weights and measures, and contemporary thermometry existed, the common means of assessing temperature was for brewers to dipping an elbow or a thumb into hot water or mash.104

101 Interview # 11, and additional informal conversations after a Pink Boots Society meeting. Once men are injured, they may need or use the accommodations that might have removed a barrier to entry for many women had they been in place at the start.

102 Interview # 11 (Noting with dismay the sexualization and unrealistic depiction of some women brewers for marketing on social media: “‘Hey, I just so happened to notice, like, your female brewers are really hot and wear really tight jeans. I don’t know how the hell you can work in that,’ or you know—Who are the pictures on Instagram that breweries are posting??” [Me: Why is brewing in tight jeans difficult?] “Well, you—you’re movin’, and you need to, one, you gotta lift with your legs. Right? It’s really hard to get in that squat pose with a tight pair of jeans. And I don’t wanna be hoisting my jeans over my butt crack all day…. Which is gonna happen. …Carharts are kinda the way to go.”)

103 Interview # 11 (“that’s also why you may not see women by themselves in a tap room at night. It’s mostly men closing up because some of those things. Like, you know, um, Naked City has a two-tier keg setup in the back. Their beer bench. Those kegs are stacked up. There’s—there’s one [gesturing] and then there’s a shelf. How do you get that keg to the second shelf?”

While that particular practice is no longer necessary, brewers do describe embodied knowledge. Though some processes have shifted to automation, there are many that still rely on humans: on their nose;\textsuperscript{105} on their gut instincts;\textsuperscript{106} sometimes on their visual or combined perceptual capacity.\textsuperscript{107} Because of the role the human body plays in brewing, and the sense of hard work and personal investment that entails, it is easy to see how labor could create a sense of ownership, or entitlement. That is, after all, the classically understood Lockean basis for our modern IP rights.\textsuperscript{108} That does not seem to track here, as discussion below will reflect. The “sweat of the brow,” as it is referred to in copyright doctrine where it demarcates labor that does not give rise to copyright protection, similarly here does not appear to give rise to a desire for exclusivity (at least not with respect to brewing; branding is a different matter). Sweat of the brow may even be one of the many ingredients that create collegiality in the industry: many hands make light work, misery loves company, and any other number of adages capture the common sense ideas that when we must accomplish drudgery, it is much better to do so with other similarly situated people, than to do so solo.

**Non-Physical Labor: Learning.** Based on my interviews, learning is such a key part of brewing that one might practically consider continuing education a necessary element of the career. The learning curve is steep at first—usually when brewing as a hobby—but even after basic skills are attained, many brewers continue to seek knowledge. They learn through reading, through doing, through collaborations of various kinds, and through industry conferences as well as institutional certifications such as the Cicerone training (similar to sommelier training in the wine industry) and the Beer Judge Certification Program.\textsuperscript{109}

**Learning by Reading.** Many brewers read insatiably. Some did so more as they were starting out, thirsty for knowledge and lacking key parts of what would eventually make them experts. One interviewee describes leaving their high-pressure professional day job during lunch and walking to the local library to pore over brewing books as they contemplated their upcoming career switch; (they speak lovingly about a particular book on water, and its profound impact on their understanding of brewing).\textsuperscript{110} Some breweries report that their head brewer may spend ten hours a week reading,\textsuperscript{111} to conduct research in existing books, and to read trade publications simply to keep on top of breaking developments.\textsuperscript{112} Many brewers I spoke with had stacks of brewing magazines in view during our interview, and one, recalling the early internet era when such print publications were a quintessential source of learning for amateur brewers because online resources weren’t yet widely available, recalled a recipe they had tucked away as too

\textsuperscript{105} Interview # 10.
\textsuperscript{106} Interview # 1, 2, 16, 22.
\textsuperscript{107} Interview # 21.
\textsuperscript{109} https://www.cicerone.org; https://www.bjcp.org
\textsuperscript{110} Interview # 16.
\textsuperscript{111} Interview # 9.
\textsuperscript{112} Interviews # 9, 14.
difficult for them then, only to remember it and revisit it two decades later, going on to win accolades and renown upon perfecting it.\textsuperscript{113} Some brewers are introverts, preferring time away from the crowds at festivals, where demand for brewers’ time, because brewers are “rock stars” and quasi-celebrities, can be intense.\textsuperscript{114} For them, reading in online brewing forums and in trade publications may represent the main mode of learning at first, and taper off as their expertise develops; periodicals simply bring news of trends or new discoveries.\textsuperscript{115}

Learning by Doing. Of course, there are multiple ways to learn, and most brewers have spent a good deal of time learning by doing. Starting out at home, often with a “Mr. Beer” kit, or similar small-scale system, they experimented, tweaked recipes, developed better technique, and eventually progressed. There are phases to developing brewing technique: brewing kits, brewing clones (or recreating others’ recipes), and then developing one’s own recipes.\textsuperscript{116} Some move through these phases quickly because of culinary or scientific experience; some serve as assistants in breweries for many years, and learn through apprenticing and collaboration.\textsuperscript{117} Most ex-homebrewers have failure stories they recall fondly, and can pinpoint lessons learned from mistakes, risks, and experiments.\textsuperscript{118} Most professional brewers will say they very rarely make mistakes now. When asked what they do if a batch is bad, they are often brought up short; in one or two cases, a story about an accidental oversight provides detail (and humor).\textsuperscript{119} But generally the answer is: once you’re good, mistakes don’t happen much. When asked how they know if a beer is good, or when it’s ready, they have technical answers as well as subjective ones, and the technical answers offer them quality control that ensures that their product is on track and consistent at each step of the brewing process. Their knowledge of the process and science behind it typically is extensive.

Learning by Playing. Brewers often fell into one of two camps: the first were those for whom perfecting was the key achievement: they sought consistency, fidelity to style (of the sort required for awards at beer competitions), and at least one or a few beers they would make the same way, for at least a little while, if not for years.\textsuperscript{120} The second were those who loved tweaking: they chafed at making the same beer twice, found it more fun, more interesting, and more challenging to keep reinventing the brewing wheel, so to speak, constantly seeking answers to “what if I did this, instead of that?”\textsuperscript{121} Far from evoking a lack of responsibility, this kind of playfulness and experimentation are revered by many in the field so long as they don’t mean a lack of quality or care; experimental brewers are considered high-status or high-skill, and allocated a wider berth.\textsuperscript{122} This

\textsuperscript{113} Interview # 10.
\textsuperscript{114} Interviews # 14, 12.
\textsuperscript{115} Multiple interviews speak with appreciation of the main brewing guild publications.
\textsuperscript{116} Interview # 9.
\textsuperscript{117} Interview # 6, 11, 18, 22.
\textsuperscript{118} Interview # 1.
\textsuperscript{119} Interview # 17.
\textsuperscript{120} Interview # 12.
\textsuperscript{121} Interview # 1.
\textsuperscript{122} Discussions of Steve Luke, Josh Waldman, Nick Crandall, as well as ABI’s handling of Elysian now.
sense of playfulness was evident in many breweries, and the notion of a “one-off” captures the idea that brewers will often try anything that sounds good… once. The one-off provides room to take an idea to production on a small scale, for limited distribution or only for the taproom, to test out a flavor or style, or to perform an experiment. Because consumers are willing to try new things, and in fact may be bored when they can’t, as interviewees report, one-off’s have a built-in market and a low level of risk. They often are used as a small partnership with another brewery, too, as a means of collaboration for fun, or for learning.

**Collaborating.** Collaboration is a major means of learning for many brewers, and for more extroverted brewers, it sounds like a source of connection and fun. Collaboration in the industry is larger than just a source of learning, however. It works in a number of different ways, but often an individual or a team from one brewery will meet with the same from another brewery, usually at one of their breweries, perhaps over a beer. Sitting down, they’ll discuss an idea they have, or float ideas around in a process of playful exchange, revolving around a theme, a cause, an event like a festival, or some other goal they are seeking to meet together. The process is casual; often it originates because brewers are sharing a beer in one of their taprooms after work and someone comes up with a “what if” question: what if we put non-traditional hops you have access to in a traditional recipe we have brewed? What if we used a wild yeast, which you have experience brewing with, on our flagship beer? At its most formal, brewers may be invited to pair with another brewery, or actually matched with one, to enter a beer in a collaboration festival, a source of creative cross-pollination and exploration that may pair unlikely parties and that helps diversify the field while simultaneously unifying brewers in creative and collective purpose.\(^{123}\)

The explicit purpose of these collaborations varies. Sometimes breweries collaborate on a beer when two breweries might have an interest in trading recipes, or generally cross-pollinating what their brewing teams know.\(^{124}\) Sometimes they collaborate when one is in imparting knowledge of a style or method,\(^{125}\) or when a more established brewer is trying to help a newer entrant with a boost through name-recognition and appeal to the larger brewer’s consumer base.\(^{126}\) The larger brewer then may benefit because getting big or established can lead to seeming stodgy, and working with a tiny new brewery imparts credibility among craft brewers and consumers.\(^{127}\) Sometimes collaborations happen to celebrate the hop harvest or in other ways connected with seasons and agricultural cycles.\(^{128}\)

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\(^{124}\) Interview # 22.

\(^{125}\) Interview # 17.

\(^{126}\) Interviews # 7, 15.

\(^{127}\) Interview # 19.

\(^{128}\) The Harvest Collaboration Series is run by Bale Breaking Brewing Company, a brewing and hop producing company in the Yakima Valley. [https://www.balebreaker.com/beer/harvest-collaboration.html](https://www.balebreaker.com/beer/harvest-collaboration.html)
The method of collaboration differs. In some cases, brewers coauthor a recipe, or use one of theirs as a starting point to which they jointly make modifications to a single batch. They typically then brew at one location, say Brewery 1, with employees from Brewery 2 on hand the day of the brewing (though usually not too involved that day). Brewery 1 then owns the beer: for legal purposes there needs to be an owner (alcohol can’t be given away for free, and there are a variety of state and federal taxes the owner will need to pay). After the beer is ready to distribute, Brewery 2 will take some agreed-upon amount, perhaps decided in barrels, and simply pay Brewery 1 for that. The precise arrangement may vary: whether the breweries share the cost of ingredients up front, for instance, may depend on why the collaboration exists. Where one brewer has no way to brew (because their brewery is new, relocating, or facing a physical constraint such as not enough space or broken equipment), a collaboration might exist to help out a fellow brewer, and the one being helped may supply all the materials in recognition that they are the one calling in a favor.

Another means of collaboration brewing exists when the idea is an experiment to see how a beer might turn out when brewed in two different places, either using the same recipe (but different equipment) or varying some ingredient, say using different hops, different water, different grains, or different yeast. In Seattle, a playful question recently led to a collaboration beer made by Georgetown Brewing (one of the most established, biggest and most-loved craft breweries in Seattle) and Chainline Brewing Company (a new and fast-rising brewery in Kirkland, located on a bicycle path and themed around cycling). What if you took top-fermenting yeast and bottom-fermenting yeast, and used those to make two different beers, with most everything else the same? They used a shared recipe, and came up with a creative way to spin the experiment with a pun on “top” and “bottom” bunks, winding up with an experiment that was fun for brewers to do and for consumers to taste side by side:

Georgetown Brewing [used] a single mash infusion method and …ferment[ed] the beer using ale yeast, with the result being an India Pale Ale. Chainline Brewing [used] a step-mash system and then ferment[ed] the beer using lager yeast, with the result being an India Pale Lager. Ale yeast is often referred to as a “top fermenting” yeast, while lager yeast is often referred to as a “bottom fermenting” yeast. Bottom, top, bunk beds.

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129 Interview # 7, 19.
130 For instance, before Red Hook’s brewery had opened, their head brewer Nick Crandall partnered with 16 local breweries to create collaboration beers that would be ready by Red Hook’s opening. Kendall Jones, Redhook Brewlab Opens in Seattle on Thursday August 17th (August 12, 2017), http://www.washingtonbeerblog.com/redhook-brewlab-opens-in-seattle-on-thursday-august-17th/
Yoking their brands together with a logo they created for their collaboration beer, varying just the names (Top Bunk IPA and Bottom Bunk Pale Lager) and font, meant that the two were engaged in a form of collaborative branding as well as brewing, all apparently done in the common mode of the industry’s friendly and casual collaboration beers.

These collaborations help transfer knowledge informally. The amounts brewed in this way are small, and brewers feel they will be able to sell them in their taproom, since even bizarre collaborations or slightly less successful experiments are likely to appease the craft consumer’s demand for variety and novelty. Because the amounts are low, they do not fear having a lot of inventory on hand, and they do not worry too much about specifying or protecting anybody’s legal rights. Every interviewee asked about collaborations stated that these operated “on a handshake,” that is, these collaborations are not governed by contract.132

When pressed about what might happen in the sorts of risky scenarios lawyers are experienced in predicting and resolving—such as a difference in estimation of the quality of the output; a brewer reneging with respect to attribution, or not meeting the terms of the handshake agreement with respect to paying for their portion of the output—brewers reveal that they see most collaborations as relatively low-risk, and wouldn’t take such significant risks that contracts would be required. Most feel they can count on trust, and rely on the compliance produced because of brewers’ desire to avoid reputational harm.

When I asked if their views would change if they were collaborating with a much larger player, all interviewees said that they would expect a larger collaborator to have, and to insist on a standard contract. The assumptions were that a larger partner would have broader distribution, a more formal culture, more exposure to liability, and more market power to insist on doing things their way.133 While I do not know what legal arrangements lay behind the following example, one collaboration with national visibility and reach can be found in Sierra Nevada’s Beer Camp, a dozen collaborations it undertakes annually, bottling, distributing, and promoting the collection as a single twelve-pack item.134 By contrast, collaborations in Seattle’s craft brewing scene are usually not bottled or distributed other than in kegs in the taprooms of the two collaborating breweries, or in some cases, in other distribution outlets, though usually still only tap, throughout Seattle.135 For the most part, collaborations, like most craft

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132 Interview # 7 gave a particularly thoughtful response discussed in the norms section, infra note __.
133 Interview # 7.
134 http://www.beercamp.sierranevada.com
135 Interview # 7 (“most of the collaborations end up being just small, one-off batches just for fun—or for special events…”).
brewing in Seattle, remain local and small-scale. These collaborations run on trust and mutual respect.

Sharing. Brewers share knowledge like it is going out of style (or perhaps more aptly, like it isn’t). Swapping knowledge or simply asking fellow brewers for help is an established behavior more widespread in this industry than any other with which I am familiar. Additionally, all the brewers I spoke with mentioned their comfort with calling a friend with a brewing question or asking a fellow brewer at a festival or taproom how to do something, how to fix equipment, how to diagnose a problem. They all indicated they would share what they knew just as readily as they would ask for help. When asked if they would help a direct competitor, the question is almost always instantly that they would do so, and the willingness to help extends to their own knowledge about brewing, running a business, using or repairing equipment, navigating a regulatory difficulty with the health department, or even handling tricky employee issues. They will help with some area they have gained expertise in, like beginning distribution, or addressing new regulations. They will share what they have, whether it’s hops or grains, in what one interviewee refers to as a neighborly mentality:

There’s a lot of “cup of sugar” type of stuff where, you know, we loan equipment or we loan, uh, some malt props, you know, just to help someone ‘cause their delivery didn’t show up or whatever it is. There’s a lot of those things that happen. And it’s great ‘cause you know that you can count on them for that as well. But I think maybe the secondary kind of, um, way to look at the—maybe explain why you do it and maybe - maybe it’s the innate reason why we do it is that there is this kind of rising tide aspect. But I do think that rising - rising tide aspect of, you know, if I can help create better beer by having, uh, an open community, and we can all create better beer, then that means that consumers in general think, um, craft beer is—you know, is in a better state than if, you know, they’re getting burned by brewery after brewery that’s making beer that they’re not into. Um, you know, the more folks that you can convert to really enjoying craft beer, the better.

Generally, as this indicates, the sharing is reciprocal, but it is not carefully tracked or contractually arranged in any way. The reciprocity feels community-oriented rather than individually accounted-for, reflecting a kind of “pay it forward” attitude: brewers may help someone in the community, and then receive help from someone else in the same

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136 Collaborations with non-brewers, notably with coffee producers, and in at least one case with a local fruit producer, are likelier to be bottled, and labels for beers from Rooftop Brewing and Ghostfish, to name two I have seen on store shelves, bear the logos of both the beer and the other brand (coffee, and cranberries).

137 Interview # 7 “the corporate policies aside of—of the breweries that are larger, you know—there’s still an understanding between the brewers where everybody respects each other—I don’t think anybody’s—there’s not too many tales of people, um, trying to take advantage of another brewer—just because.”

138 Interview # 6 and others.

139 Interview # 4.
community. The rhetoric of the rising tide that lifts all boats serves as a kind of motto, as well as an informal mode of quality assurance: helping other brewers increases the quality in the field. The competition increases, but so does the reputation of craft beer, which will redound to the helper’s benefit. Craft breweries help each other when faced with a puzzle or problem, and when starting something new, even when it takes a lot of time, and time is a precious resource.140

Part III. Craft Brewers’ Attitudes and Norms

In addition to asking questions about craft brewers’ practices and habits, I also sought to uncover what mattered to those in Seattle’s craft brewing community, and I probed issues like pride and sense of ownership in their product; assessment of risk to their interests and hard work if those were undercut by competitors; and understanding of the law as a force that might make a difference for them, for better or worse. Craft beer presents a rich case study partly because it is an area in which multiple forms of legal protection could be available: patents for equipment or processes; trademark protection for brand names, or sometimes beer names; copyright protection for logos, labels, and tap handle designs; and trade secrecy, in practice and through contracts. Litigation over trademark rights is not uncommon, and it may be growing. But by and large, brewers do not avail themselves of IP law as much as they could. Though formal norms exist through IP law, informal norms appear to shape community behavior among craft brewers as much as, or more than, law, and these norms operate as an additional layer of information governance that bolsters the knowledge commons system. This Part identifies certain industry norms and offers evidence of attitudes toward sharing, ownership, exclusivity, IP, and reliance on law more generally, and it shows how interviewees tend to think bimodally about their interests and rights.

A. Attitudes towards IP

Brewers in Seattle are unified in using a rhetoric of sharing, and in displaying behaviors that reflect a collaborative ethos. They tend to shy away from statements of ownership or exclusivity, rejecting the idea that their work is original, and struggling, as I press fact patterns on them, to find a situation in which they would claim ownership of something about their beer or brewing. Unsurprisingly then, their views on IP reflect an anti-property bias that typically inclines them towards not seeking protection through legal means (or even usually through contracts). Trademarks change the calculus somewhat, reflecting, I suspect, an emphasis on reaching and pleasing consumers above almost all else.

Patents. Brewers do sometimes discuss processes, devices, or modifications of various kinds that at least plausibly might be patented. In other words, they engage in activity that may resemble creating patentable subject matter, but typically they will not consider seeking a patent. The explanation is partly practical: many brewers have not yet sought

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140 Interview # 6.
trademarks (cheaper, faster, and much easier to get), and the idea of patents is daunting in terms of effort and cost. Greater uncertainty attends patent prosecution, and most are vaguely aware that it will take a long time to see benefits. But it also sounds somewhat off-putting, in the value system of craft brewing: unless they’re selling devices, or moving into a market in which the process or the thing to patent is the product, it’s not what most wish to do. One admitted if it was possible to get a patent, he would consider doing so, but he had to be pressed pretty hard to get to the idea that anything at all connected with his brewery could be patented. Generally, to the extent brewers are modifying or tweaking equipment for their purposes, they’re doing it to make better beer, or to save money, not to create a product they can use for a separate licensing stream or from which to reap revenues. When asked about whether one would mind if someone copied an innovative device, brewers were often inclined to be flattered by, and generous about the copying, and told me in one way or another, “we aren’t in the manufacturing business: we make beer, not stuff.”

Copyright. Brewers were receptive to seeking copyright in their merchandise, logos, tap handles and labels. A thriving art market in beer labels suggests the market has benefited from an explosion of talent and interest in this art form, and it is no surprise to learn that artists’ work would be protected through copyright, even if plastered onto a beer bottle. There was unanimity that recipes for beer are not copyrightable, on functionality grounds (brewers could articulate the risk to other brewers should they be unable to use basic recipes), on originality grounds (many protested that there doing nothing new), and on principle: a commitment to sharing recipes recurs as a refrain, even if brewers mean different things by “sharing.” Also, most brewers endorse copying: they refer to it as a necessary and valuable starting point, sometimes even going so far as to start with someone’s yeast, found at the bottom of a bottle, or to work backwards from a favorite beer (or to experiment by adding to an existing beer). Brewers describe starting to create a new beer by sometimes beginning with a bottle of someone else’s beer, or beginning with the yeast in the bottom of a just-enjoyed bottle, thus literally replicating constitutive parts of someone else’s beer. Brewers use the language of building blocks in ways similar to the rhetoric of improvement in IP scholarship and judicial opinions. Because so many brewers are autodidacts, learning their craft through their own experiments and

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141 There are examples in the field of innovations whose creators set out to change a product or process, such as the Crowler (http://www.ball.com/na/solutions/markets-capabilities/capabilities/beyond-beverage-cans/crowler), the “hop torpedo,” (https://www.brewbound.com/news/torpedo-how-sierra-nevada-turned-a-new-package-and-a-new-style-into-a-remarkable-weapon) or the PicoBrew home-brewing appliance. (In full disclosure, I am a member of the kickstarting campaign for PicoBrew Model C, and supporting it at a low level of contribution.)

142 Interview # 19. This also came from a brewery in which part of the ownership or management team (vaguely described to protect anonymity) had experience in legal practice, suggesting greater familiarity and perhaps comfort with legal tools.

143 This is a paraphrase from Interview # 4.


145 Interviews # 1, 7 and 14.

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research, copying plays a fundamental and constitutive role in professional development and in advancement of the field overall.

Beyond that, beer is viewed as impervious to copying. There are weak and strong forms of this claim. The weakest claim is that if given the general outline of a recipe, someone else cannot recreate it perfectly anyway, which suggests that there is no point in protecting against copying, and provides a possible explanation for brewers’ openness. Yet when I followed up for more detail, it emerged that some people mean they would share a list of ingredients, or specify the hops used, but not provide the exact amounts used; some would provide the full ingredients and amounts but not specify the techniques, temperature, fermentation time and so on. The variability here shows that many brewers withhold some information even while ostensibly sharing, perhaps suggesting concern over exact copying should full information be made available. The strongest form of this claim is that beer will not be identical even if the exact recipe is carried out, with the same instructions and, in theory, the same techniques, because equipment is different, and space is different. Using the same equipment in a differently configured brewery will, according to these brewers, make a different beer. One interview provides a detailed explanation of how at each step of the process a brewer can inject subtle differences in the final product. In addition to the choice among kinds of hops, yeast, and water, all of the following can change the final beer: the selection of grain and malts; the coarseness of the grain crush; the heat source (infusion only, versus a steam-jacket, electric, steam, direct fire); the means of spinning the grains; and the length of fermentation. All of these differences can arise with two beers bearing the same style name, and in some cases, the same basic ingredients and recipe.

Brewers are quite emphatic about beer’s imperviousness to copying, whether they endorse the strong or weak form. It may be perfectly accurate as a statement about brewing: I lack the technical knowledge to refute the claim, and I have spoken with so many knowledgeable brewers, both on and off the record, who hold this belief, that I have no reason not to defer to them. If it’s true though, it’s difficult to square with the idea of cloning beers, which is, as mentioned earlier, not just one of the phases of development in a brewer’s gaining knowledge, but also a challenge homebrewers set for themselves—cloning and releasing recipes of their favorite beers. Clones allow people throughout the country to brew their own copies of beers from far-flung places, thus giving them access to beers that are otherwise unavailable to them. The very idea of a

147 Interview # 8.
148 Interview # 16 “Sometimes, people use different suppliers for grain, um, so, you know, for our German lager, there’s a couple—three, four different German maltsters around, or I know people that do really good German-style beers, and they only use malts from Canada. …Like, right at the grain before it even gets to the glass—you can have a variance in your product.”
149 Id. “your grain crush [coarseness versus fineness], um, could have a very drastic impact on the, uh, the characteristics of your beer.”
150 Id. [Interview # 16]
clone is that it can stand in for another beer, which seems at odds with the imperviousness claim.

One wonders whether part of what makes beer impervious to copying is that the brewer who makes a beer has extremely subtle nuances in their technique—assuming all other factors are the same—or whether an implicit personality theory is at work, a version of a Hegelian idea that one infuses oneself into a work in some sense, but with a different outcome: rather than resulting in property, it results in openness, and the need not to worry about protection.\(^\text{152}\) Without the original personality carrying out the recipe, the beer cannot be identically copied. Another explanation lies in the difference between explicit and tacit knowledge; there is a strong belief that whatever explicit knowledge is passed along, the original brewer likely retains the tacit knowledge to make the beer uniquely.\(^\text{153}\) This manifests itself in interesting ways when a brewery is famous for a “flagship” or classic beer, yet the brewery changes hands, or a head brewer retires. Several brewers discuss inheriting a flagship beer and needing to maintain it even as the successor-in-brewing-interest. Most of these brewers will confess somewhat sheepishly to tweaking it slightly, either out of necessity (hop availability changes, for instance, or consumer preferences alter slightly) or, even more sheepishly, because they prefer it slightly better their way.\(^\text{154}\)

**Trade Secrecy in Brewing Information and Other Data.** A further complication about attitudes towards copying exists in brewers’ attitudes toward secrecy. If beer cannot be copied sufficiently to trigger upset, one might expect total openness with respect to secrecy. Yet that is not exactly the case. Some brewers do post their recipes, or welcome others to go ahead and make their day by attempting to clone their beer. Deschutes, an Oregon brewery, is reportedly known for posting some of its recipes online, and at least one very successful brewery I interviewed said it has done the same.\(^\text{155}\) Georgetown Brewing Company, creator of one of the most famous craft beers in Seattle, Manny’s Pale Ale, has its detailed recipe posted online for all to see.\(^\text{156}\) When asked, brewers will admit they tend to keep their recipes password protected, or behind actual lock and key if the recipes or logs are kept with pen and paper.\(^\text{157}\) Asked who has access to such recipes, brewers and owners generally made clear that the recipes did not circulate. Thus despite the lack of belief that recipes could be copyrighted, the strong rhetoric of non-uniqueness and non-originality, some intuitive protection of the recipes persists. There are certain

\(^{152}\) Hughes, *supra* note __, at 334. It may be that non-possession, non-use, and non-marking of the beer brewed according to Brewer A’s recipe, but without permission by Brewer B, seems, in the logic of the brewing world, no longer to be Brewer A’s beer. Again, that may also track state of the art brewing science; regardless of the empirical fact value, the rhetoric of brewers interviewed suggests a deeper theme at work.


\(^{154}\) Interviews # 1, 2, 21.

\(^{155}\) Interviews # 9, 4. To find the recipe for a Deschutes beer, go to the website, click on “explore our beer,” click on a beer, and scroll all the way down. Each beer is listed with its mix of malts and hops. https://www.deschutesbrewery.com

\(^{156}\) https://georgetownbeer.com/beer/details/manny-pale

\(^{157}\) Interviews # 6, 18.
behaviors reflecting secrecy that do not rise to the level of norms but that reflect observable patterns. Paradoxically perhaps, almost all brewers report that if someone called with a specific question, they would likely answer it fairly openly, secrecy be damned. When pressed for why, a range of responses exist but brewers report that they would be flattered (some are early-stage and cannot yet imagine being asked for such help), and they overwhelming report that being helpful and open are key to the community’s values. Conditions did exist, however. So long as they knew the person personally, or knew the person by reputation (of the brewery, or of the beer, through its quality), or so long as they simply understood the reason for the request, they would likely default to openness. The level of openness varied some, but the responses generally started with partial openness, and ended, with follow-up questioning, near total openness.

An exception to sharing information lies in financial data, which are never shared as far as I have been able to tell. Similarly, work derived from special, “non-brewing” talents such as expertise in software or microbiology is not typically shared. It may be one place I have seen evidence of a competitive edge being used and protected. Sweat of the brow here counts, and special software created to help with inventory and brewing cycles, or numbers crunched, optimizing cell counts for example, will not be shared. It’s not that the information isn’t somehow available through other means, but rather, that these particular brewers happen to have a special skillset or prior background, and they do not need to buy services that others might have to pay for, or skip. This results in saving costs and is viewed outside the expectation of regular sharing practices.

**Regulation through Contractual Control.** I asked interviews about contractual means used to regulate information and innovation, including offering departing employee scenarios, and the responses were fairly uniform. A few breweries employ non-disclosure agreements (NDA’s) though only one I spoke with had a non-compete, and it was a generous one, in a spirit intended to help both brewery and brewer thrive, divesting the brewer—a part owner—of his share should he go elsewhere. The breweries employing NDA’s, or willing to use them once they begin adding employees typically came from large companies where they had signed them as employees themselves, and had perhaps internalized an idea of competition not born in brewing; whether it will take root and flourish in this community is a separate question. Most brewers and owners report, usually with a little shrug, that they expect their employees and brewers—if not their fellow owners—to move, taking their knowledge with them. Multiple interviews describe that as the natural way of things in the brewery industry; people go, taking their knowledge with them, just as they brought their knowledge to you on their way in. The crux of this was always the relationship though, and the nature of the departure. Bad faith changed the calculus, as did the target destination: going to start a competing brewery, or to work for a competitor in craft brewing was expected, and okay. Going to work for AB InBev often prompted a different response.

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158 Interview # 15.
159 Interviews # 16, 18.
160 Interview #19.
In one case, the contracts drawn up at the time of founding and incorporation specified best practices in the event of unwinding, including clarifying that property created during employment would remain with the brewery. When asked about this contract, the owner stated that the purpose of all these legal documents was at base to protect the friendship the co-owners brought to the start of this business. The interviewee explicitly states the contract’s purpose is to help prevent future litigation, that is, to use law to avoid law, recalling the old adage that a contract is a battle.\(^{161}\)

**Trademark law.** Trademark law was the standout area with respect to brewers’ attitudes about ownership, investment, and use of legal tool to enforce their rights. The topic deserves an article unto itself, but can be summarized briefly here in keeping with the larger purpose of providing a thick description.\(^{162}\) Most brewers are aware of trademark law, and believe or know that it might apply. Those that have a trademark have worried about their name, and continue to worry about enforcing their rights, for reasons discussed below. Those who have not registered trademarks appear daunted, may report feeling naïve, or worried that by sitting on their rights they may lose them.\(^{163}\) Most feel they ought to do more, but when making decisions about how to spend any excess cash, most report finding higher priority uses, like purchasing new equipment, expanding their space, hiring personnel, or investing in sales and distribution.\(^{164}\)

Many breweries do have registered marks in brands, and most of those are federally registered. Some have trademarks in beer names. Many have received requests to discontinue a use of a name, both formally (through a letter from a lawyer) and informally (a call, or a visit from a neighboring brewer). Some have issued requests, but they are in the minority in my existing data sample. All know how crowded the field is, because of having tried to use names (even without registering them) and having discovered their top choice, or top few choices, already taken. This is especially true with respect to puns:

> All of these people trying to name beers with usually hop puns in the name. Every hop pun in the world is done now. They’re all taken. Trust me. Like, when I was renaming our double IPA [because of pressure exerted by others using somewhat similar names], I went through every

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\(^{161}\) Interview # 16 ("probably the only way if things go bad to save a friendship is to make sure we have everything on paper ’cause we say, you know, you can’t—at that point, you’re—there’s so much emotion flying around—that you have to say, hey, this is what we agreed to. Remember that. It’s right here. So [the lawyers] helped us kinda craft, like, a you know, if—if an—whatever hits the fan and, uh, we can—we can kind of resolve it—in the most civil way possible.")

\(^{162}\) For a scholarly treatment of the topic, see Rebecca Winder, *Trademark Protection in the Craft Brewing Industry: A Beer by Any Name May Be An Infringement*, 15 WAKE FOREST J. BUS. & INTELL. PROP. L. 148 (2014).

\(^{163}\) Interviews # 8, 9, 12, 17, 18

\(^{164}\) Interview # 12
hop pun I could conceive of. They’re all taken. All of them. So from a trademark perspective, like, somethin’s gotta give.”

Trademark depletion is real, and industry participants with a role in naming beers feel the constraints of limited availability when they name their own beers, regardless of whether they care about trademark rights for their brewery; in some cases, brewers try to avoid names altogether.

By contrast with the shrugs I received when asking brewers for their feelings about having recipes copied or used impermissibly, having their marks, labels, or brand names copied elicited very strong responses. Most brewers and owners interviewed display a strong sense of ownership in their marks or brand, and believe that prior users have the right of way. Later users should be searching more carefully, and ought to be expected to steer clear of existing names. Many brewers report using Google and Untapp’d (a social media check-in app for beer drinkers) to conduct unofficial searches, and a small number searched TESS, the Trademark Electronic Search System. While TESS indicates marks that have been abandoned or cancelled, Untapp’d does not always make clear whether a beer is still in production, or whether it has a mark associated with it. Thus brewers are actually carving out a wider-than-necessary berth when they steer clear of all beers on Untapp’d whether the beer names are in use any longer, or may even have been out of use since Untapp’d first came into being in 2010, but have been discovered and logged by beer drinkers later. Adding to the problem of using Untapp’d as an informal search registry is that non-paying users cannot, or perhaps for a long time could not, correct mistaken check-ins or misspellings of a beer’s name, thus creating mistaken perceptions for those searching for names.

When discussing actions they might take with respect to their trademark interests, brewers strike a measured tone, asking first whether the purported infringement will actually harm them. While they express annoyance at the copying, they also display reluctance to act unless their brand will be harmed, and they usually mean that consumers’ perception of their beer will be affected. In other words, they use something like actual harm as a standard. They carefully weigh the territory, reach, likely expansion, and size of the alleged infringer, and they inquire as to intent. Typically, they ask if there is a way to avoid litigation, even proposing sharing: in one instance an interview talked about having amicably split the country down the middle, using the Mississippi River as the line of demarcation.

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165 Interview # 14
167 http://untappd.com; http://tess2.uspto.gov/bin/gate.exe?f=tess&state=4801:m1kn3o.1.1
168 Interview # 14 but cf. Interview # 18 (suggesting that perhaps Untapp’d has updated this unpopular policy).
169 Interview # 14
Trademark is thus the one area of IP law where brewers display some inclination towards using legal tools, and sometimes feel the pinch of the law as others enforce rights against them. They may reasonably wonder if they ought to be using law more, and it is possible they would do so if legal counsel were cheaper and more easily available; teasing that out requires further data collection. Cutting against that speculation, however, is that there is a strong general norm against using the law excessively, or in fact, much at all, as the next subsection discusses.

B. Norms in Craft Brewing

Existing IP norms case studies have provided compelling evidence that sometimes informal modes of governance operate to supplement where law does not reach, or operate in lieu of existing laws because of historical practice or ongoing preference in the industry. At times, non-legal forms of governance protect creators better, or more easily, than formal laws. The past decade has seen a voluminous body of IP scholarship develop, cataloging the norms of various creative communities, and noting where norms diverge from, overlap with, or supplement laws.¹⁷⁰ That scholarship has been widely discussed and anthologized, and it provides a helpful backdrop for my discussion of norms.¹⁷¹ The craft-brewing norms I identify in Seattle including speaking no evil of fellow breweries; avoiding legal tools as much as possible; sharing what one knows and has; and policing group boundaries to include community members and exclude outsiders.¹⁷²

Defining Norms. As I use it, “norms” refers to rules that govern behavior, enforceable with sanctions when violated, but arising informally rather than through law.¹⁷³ In order to get analytical value out of norms, it is important to try to distinguish compliance with a norm from mere behavior, that is, to avoid reductive behaviorism.¹⁷⁴ Behavior differs


¹⁷¹ Kate Darling, and Aaron Perzanowski, eds., Creativity without Law: Challenging the Assumptions of Intellectual Property Law (2016)(collecting numerous articles by authors documenting the operation of norms in creative and business fields from pornography to fan fiction to tattoo parlors and roller derby names).

¹⁷² This is far from an exhaustive list of norms. Indeed, a crucial category of norms I have reserved for future work because of its scope and complexity is naming, and the rules and penalties associated with how breweries select, amend, and abandon names.

¹⁷³ Robert Ellickson, Order Without Law: How Neighbors Settle Disputes 167 (1991) (“[M]embers of a close-knit group develop and maintain norms whose content serves to maximize the aggregate welfare that members obtain in their workaday affairs with one another.”)

from a norm because one may behave a certain way out of habit, convenience, or pleasure, and if so, compliance with what appears to be a norm may actually be merely behavior, explained by something else entirely.\(^\text{175}\)

An example of a norm might be promise-keeping: if a brewer promises to give credit to another brewer when they undertake a collaboration beer (jointly creating a recipe, and brewing at the brewery of one or the other), he breaks his contract, thus violating a law, if he breaks his promise. Brewers rarely use contracts in such scenarios, and with some exceptions, IP law rarely requires attribution. Law does not provide a penalty, and a behavioral explanation might suggest that a brewer might wish to keep a promise because he is a trustworthy person, or collaborating with a friend, or has a strong sense of fairness, etc. A norm must demonstrate that sanctions change the calculus for behavioral choices, and may trump determinants like personalities, relationships or ethics. Here, if the brewer violates this promise-keeping norm, he will face reputational loss and sanctions. He probably won’t be asked to collaborate again. Regardless of the lack of law, and regardless of the internal aspects, the external penalty will force his hand (and protect his collaborator). This simple example suggests that a norm is not just a demonstrated behavior but a rule, whether or not backed by a law, that a community develops as a reflection of its decisions about community governance. Numerous norms govern how brewers treat each other, and how they act with respect to their craft and their business.

**Sanctions.** There is evidence that many sanctions operate to give teeth to craft brewing’s norms. Some of these sanctions are internal to the community, such as warning fellow brewers and owners about someone’s behavior or character (very carefully, to avoid violating the speak no evil norm); refusing access or withholding resources to those who have refused to share; and refusing to collaborate or even boycotting a taproom or product. Internal sanctions also include expelling from craft industry associations anyone whose brewery ceases to be craft due to an acquisition or change in ownership. Some sanctions are external facing, and refusing to share, or otherwise flouting the relevant norms can lead to shaming, through social media and blogs so that consumers become aware of the opprobrium. This is especially effective for shaming those who violate the norm of law-avoidance, that is, those who try to enforce their legal rights: consumers hate to see brewers airing their intra-industry laundry. Shaming and mockery may also occur through irreverent beer names, as had happened when Elysian produced its Loser Pale Ale, marketed with the tagline “Corporate Beer Still Sucks” (which was yet another of the factors making AB InBev’s acquisition of Elysian rather ironic).\(^\text{176}\) Boycotting can be done externally, on a larger scale, and in the craft brewing world beyond Seattle, a recent example may be found in Asheville, North Carolina. Wicked Weed, a highly respected

\(^{\text{175}}\) The distinction seems especially important in the arena of qualitative empirical research: teasing out nuance and interpreting interviews for patterns of meaning depend on understanding motivations as accurately as possible.

brewery, held an annual festival, The Funkatorium Invitational, dedicated to wild and sour ales, and typically attended by breweries and consumers all around the country. Following AB InBev’s purchase of Wicked Weed, a huge backlash and planned boycott led to the festival’s being canceled; a new festival was announced a few weeks later, to be held in Charleston, South Carolina.\textsuperscript{177} Sanctions exist, and they demonstrate that norms often out-power law in their ability to shape the behavior of those in the craft brewing community.

\textbf{Speak No Evil—in Public.} An important norm I observed in interviews was that brewers are reluctant to speak ill of other craft brewers. Reputation being incredibly important in this tightknit community, few brewers would speak ill of another brewer, even if characterizing in general terms a bad faith act, or bad judgment (or once, when an interviewee described a brewer’s notorious drunkenness and bad behavior towards employees, both so rare to hear of in this industry, in any follow-on interviews I will be listening for whether there is in fact a norm against drunkenness).\textsuperscript{178} This desire not to speak ill is different from avoiding judgment or criticism of brewers; when reminded that these interviews were confidential, and would remain anonymous, brewers felt freed to say what was on their mind even if it meant speaking ill of a brewery identified by name. In other words, the norm was a rule against speaking ill of others in public, where it might cause reputational harm. Multiple interviewees described outliers who did otherwise as gossips or as people not integrated or well respected in the community. The sanction for speaking ill of others is thus exposing oneself to ill speech in turn: reputational harm that arises when the norm against speaking negatively no longer protects you. This may be a broader ethos in the craft brewing industry: critic Michael Jackson was famous for never panning a brewer; if he had nothing good to say, he preferred to say nothing at all, and would simply pass over a brewery and refrain from reviewing it.\textsuperscript{179}

\textbf{Share What You Know, Share What You Have.} Interviewees describe with discernible pleasure the openness in the craft brewing community, and sometimes note what a difference it is from other industries they have experienced.\textsuperscript{180} There is an expectation that one will share knowledge and resources, and be shared with in turn.\textsuperscript{181} Merely sharing because one wants to help, or has enough to share is a practice that reflects generosity, but not a norm: recall that the key is whether sanctions exist that back these norms. In this case though, sanctions for not sharing include disdain, shaming, exclusion

\textsuperscript{177} Chris Mottram, \textit{Wicked Weed’s loss is South Carolina’s gain with a new sour beer festival} (May 26, 2017), https://www.charlestoncitypaper.com/Eat/archives/2017/05/26/wicked-weeds-loss-is-south-carolinas-gain-with-a-new-sour-beer-festival
\textsuperscript{178} Interview \# 11.
\textsuperscript{179} Hindy, supra note __, at 18-19. This attitude is echoed in Interview \#16, when describing the disciplining effect of fearing disapproval on social media: “The beer bloggers around are—generally very respectful and… they don’t really say anything bad, but—there always can be…[shrugs] And… you don’t wanna be the first one.”
\textsuperscript{180} Interviews \# 5, 8, 9.
\textsuperscript{181} Interviews \# 4, 9.
and withholding. Consider the following exchange (in which two brewers were being interviewed at once):

Interviewee 1: “It’s pretty amazing, like, the amount of openness. … a lot of people that come from outside the industry … from other—maybe … even, like, food science, … are just stunned at the amount of knowledge that just freely floats around where, yeah, you want to know exactly how I did that? Sweet. I will tell you.”

Interviewee 2: “I think - I think that comes from us being generally good—good-natured and good-willed as a - as a brewing entity in the community. Like, I think it’s just—it is open, …and you react to it by being open as well.”

Interviewee 1: Um, and it’s very off-putting when people are not, uh, and you’re usually kind of like, what's wrong with them? [Laughter]

Interviewer: That’s interesting. Would it make you less likely to share something with them in the future?

Interviewee 1: Potentially.

Interviewee 2: Usually if they’re not open with you, there’s – there’s no exchange at all.

The brewers find it unsettling when brewers do not share, because it departs from community expectations. In some cases, brewers may find themselves subjected to mockery for refusing to participate in the open exchange of informational resources. In some cases, informational resources will be withheld in the future. Note that this brewer indicates it as a precondition, and if he has reason to believe the one seeking information will not reciprocate, he will refuse the request from the start.

Avoid Law as Much as Possible. A strong norm urges against using legal tools first, if one uses them at all. There are myriad legal issues brewers face with respect to with incorporation, zoning, liquor sales and service, and taxation, and those are run-of-the-mill business issues. The norm discussed here pertains to partnerships, ownership and rights, not the everyday legal issues brewers cannot avoid. There is an uneven level of knowledge in the industry about IP rights that may by default make a practice of not registering rights, or rarely enforcing them.182 Sometimes brewers sound defeated, sheepish, or reluctant when stating they would enforce their rights under certain circumstances. It seems to go against the community’s grain to some extent to stake out ownership rights and then defend them through law. One brewer explained it this way: “craft brewing’s all about little guys versus big guys, and enforcing trademark law is kind of a big guy thing.”183 Most brewers state that they would generally try to resolve a possible infringement scenario with a friendly call first. One even offers a heartening possibility: “ideally, it would turn into a collaboration—an east coast, west coast

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182 Of course, those that register will likely have a bias towards enforcing them, and sometimes display what seems like a sense of obligation to enforce when I tweak a fact pattern to make a hypothetical trademark similar to theirs suddenly closer to their market: “Well then we would have to [enforce], yeah.”

183 Interview # 14.
collaboration.” A powerful example was set nationally, and much discussed in the craft brewing community online, when two breweries, Avery Brewing, and Russian River Brewing, decided that rather than fight over the name “Salvation,” in connection with their Belgian beer, they would blend their Salvation beers and produce “Collaboration Not Litigation Ale.”

Beyond ownership, there is a certain reluctance to use law during partnerships too, even though in the eyes of lawyers, many collaborative practices among brewers may rise to the level of joint ventures, the kind of partnerships that law usually has a hand in shaping and governing.

I think especially with the brewers—if we’re collaborating with brewers in the area—… there’s—it’s almost—I mean, brewing’s almost old school in that certain way—where, um, it’s just a handshake… And just because reputation means so much in the brewing industry and—if you start doing something sketchy, then people will—people will know and uh, ignore you.

A handshake matters, and it is backed by the knowledge that reputational risk disciplines industry participants, as do sanctions like being ignored. Note that the interviewee above qualifies her claim: it pertains to collaborations with brewers in the area.

**Police Group Boundaries.** This norm operates as a strong meta-norm to delimit the boundaries of the craft brewing community, and distinguish friend from enemy, in-group from out-group. By meta-norm, I mean that it dictates to brewers the mode of norms to apply in a given situation; norms in Seattle’s craft brewing community are bi-modal, and brewers may operate by different norms depending on the identity of the party with whom they are dealing. The justifications for this meta-norm vary; paraphrasing them, they go something like this: Big Beer is a corporate giant focused on profits, Big Beer cuts corners on quality in their brewing, or Big Beer is anticompetitive and plays by rules our kind can’t support. At times brewers I interviewed provided a reflex answer that at first seemed superficial or jingoistic, or as though the answer were so obvious there was no explanation necessary: I don’t patronize Big Beer because they’re Big Beer, dummy! But where such a sentiment was present, subsequent questioning revealed that interviewees had a welter of details and experiences to support their position, including industry knowledge about distribution channels, corporate strategies, and brewing methods; secondhand knowledge of employee conditions; and perhaps experience as a consumer drinking the beer in question before they found (craft beer’s) religion. The position, in other words, reflected a complex combination of beliefs and knowledge. The strength of the conviction varied, too, and it dictated an array of different behaviors.

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184 Interview # 22.
186 Interview # 7.
In some cases, the norm was loosely: don’t collaborate with the enemy. For instance, most brewers interviewed stated that they would not partner with Big Beer even though that would give their brand a boost and make them more visible.

[W]e’ve had a couple opportunities to collaborate with some of the larger breweries, but we’ve—just based on kind of the principle thing—we have not…but it] would’ve been, uh, you know, part of me is um, kinda sad about it, but um, you know, it’s almost—it’s almost like a reputation thing where I c—I can’t support somebody whose company is, um, actively getting tagged by, uh, you know, by Washington State Liquor Control Board for pay to play, things like that.\(^\text{187}\)

The reference to “pay for play” refers to a violation of liquor laws though undue influence (paying to monopolize distribution channels, in brief). (The brewer declined to state the entity at first, in keeping with the “speak no evil” norm; the reminder of anonymity caused him to reveal the name). Moments later, he states wistfully that he might have enjoyed the opportunity (“it’d be a big boost for us in terms of visibility”), but he just can’t bring himself to do it. He cites both the reputational harm associated with partnering with Big Beer, and the principle of the thing, based on his own values about the shady use of “pay to play.” His expressions grow even more nuanced, when he is given a hypothetical in which Elysian Brewing Co—again, the Seattle-brewery purchased by AB InBev—is in the picture: Big Beer as an abstraction is easier to avoid than the particular instance of it embodied by Elysian. The people who work there, whom he knew before the sale and some of whom wound up there after the change of ownership are fellow travelers in the industry.

So again, I—I really like the brewers. …They’re all still really good guys—but—I have no desire to support financially that—I’ve known the [brewers at Elysian] for a while, and they’re great guys, but—I still can’t support the business practices that, uh, that the corporate entity supports…whether knowingly or not, but—you know, they kind of—they still enable it…They’re there.

He struggles to keep a positive light trained on his friends, and in the unedited version, emphasizes a few more times that they are really good guys. Notwithstanding that, by the end of his statement he has somewhat reluctantly confessed that he believes that by being there, being employed by Big Beer, taints them or suggests acquiescence and perhaps moral culpability for the values shaping Elysian’s culture today. With a quick pair of follow-up questions, he confirms where he stands:

Me: “Would you buy their beer?”
Interviewee: “Um, no.”
Me: “Okay, would you drink if somebody came to you with it… and it’s free?”
Interviewee: “Yep… I’ll drink it, but I’ll never buy it on my own.”

The problem isn’t with the beer, or with the people, it’s with the corporate entity, the practices it uses and that its employees implicitly endorse, and the harm associated with other people knowing you are doing business with Big Beer. The fear of reputational sanctions makes this a norm of exclusion, with an added layer of moral valence that may strengthen adherence to the norm.

C. The Bimodal Norms System

For many craft brewers, the meta-norm to police group boundaries informs the rest of the decisions they make about sharing, ownership, and litigation. While one or two of my interviewees did not strongly differentiate between craft brewers and Big Beer (just one of the 22 formally interviewed said they still happily buy Elysian beer), the overwhelming majority use language that signals antipathy to what Big Beer represents. Most brewers will change their answers to hypotheticals I ask them to consider, when the action requiring a response is a craft brewer or a large brewer. I asked about various scenarios familiar to IP lawyers, and bimodal norms can be observed in interviewees’ answers.

The Departing Employee Scenario. I asked brewers to reflect on their relationship to a close employee, such as a head brewer. Given their decision to leave and accept employment elsewhere, brewers were asked what expectations they would have regarding recipes, secrets, company information, and so on.

*Interviewer:* So what—how would you feel… if your brewer left and took the recipe or their knowledge of how [Brewery Name redacted] is making its beer, and either started repeating—

*Interviewee [interrupting]:* I think that’s just part of the game. That’s just part of everything. Brewers leave.

*Interviewer:* Yeah?

*Interviewee:* Yeah. I—I—and [nodding towards the brewing equipment where the head brewer is working] I imagine off the record him leaving within the next four to five years to start his own brewery somewhere. You know? And is that, is that worth it with the capital investment? Is it worth it with a reputation investment? I mean, you’re going to be suing another, another brewery? …you could—you could easily say, you know, there—he’s—that’s our recipe, but then you kinda think about the effort
you’re gonna have to go in just to—what are you gonna do, sue him? Are you gonna sue him? Are you gonna take him to court? So I-I think, I don’t—like, I wouldn’t even think about doing that. You know? Just because um, I think—I think how microbreweries think of themselves as they’re part of a team that’s not—we’re not the enemy.188

Interviewee # 3 is dismissive at first: brewers leave, it’s part of how the industry progresses, and even if it weren’t, the investment in litigating the issue would not be worth it. His voice rises in disbelief, “suing another… brewery??” His refrain of versions of “are you gonna sue him” suggests just how implausible and unappealing that sounds to him. He tries to explain his disbelief in terms of the metaphor of a team, united against a common enemy. Then I change the hypothetical.

Interviewer: What if your brewer left and didn’t go to like another microbrewer, though? What if they went and set up in like Elysian?

Interviewee: I’d sue the shit out of them.189

He doesn’t miss a beat, and there are no extra words, repeated clauses, or questions: Interviewee #3 knows what he would do. Whereas a norm against using legal tools causes hesitation in the first hypothetical, in the second instance, he has no compunctions, and he now expresses solidarity with craft brewers by showing that he would not let behavior like this go unpunished.

Trademark Infringement Scenario. I asked interviewees to imagine that they have a registered trademark and that they discover a microbrewer on the other side of the country is using a very similar mark. In the excerpt described below, the interviewee had very recently discovered two such uses with respect to his “Rainfall Lager.”190 Both uses were plausibly infringing (in both his and my opinion), and he revealed that he had been mulling over what action to take in response to both. The first is a tiny brewery operating in three counties in the Midwest; the second is a nationally dominant but still independent craft brewery. The interviewee begins by saying he’d start with a call to the brewer if possible, keeping in mind the volume and reach of the other brewer’s business. He states that it might be hard to get the owner or lawyer on the line if attempting to reach the very large craft brewer, which might cause him to send a letter instead. He works through the considerations that would shape his decision:

[If they’re makin’ [small amounts] at a time—you know, whatever, like, a few kegs get sold in some city in Illinois, it’s not really affecting my mark. If Brooklyn Brewing191, who’s a national brand, wants to ship a keg of

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188 Interview # 3.
189 Interview # 3.
190 Names are changed to protect anonymity.
191 Brooklyn Brewing was selected to stand in for the brewery mentioned in the interview because both are large, well-established and very well-respected craft breweries that operate on a national scale.
Rainfall to Seattle, then they are, you know, not just, like, using my trademark. They’re using my trademark in my own market. It’s like I don’t wanna be asshole-lish about it, but, you know, c’mon, guys. So I’m probably gonna have to write them a nasty-gram. Or it could turn out they’re absolute assholes and they’re like... ‘Well, you know, we’re big, and you’re small, and prepare for litigation you can’t afford.’ So.

He is seeking a reasonable position and emphasizes that using a federally registered mark in the same business and very market of its owner crosses a line. Yet using law to enforce trademark rights is something to apologize for: “I don’t wanna be asshole-lish.” At the same time, the brewer displays impatience (“c’mon guys”) with breweries not bothering to run trademark searches, or ignoring search results, given that he owns a federally registered mark in the name “Rainfall” for beer. Size of the brewery plays a role in the calculus, and stimulates fear of unevenly matched resources. His concern is that this national craft brewer might have more legal capacity, might be unfriendly and—in contravention of Seattle’s general norms—actually use it to the fullest extent. His reflective answer shows he is considering many variables. And then I change the hypothetical.

Interviewer: What if it were Anheuser-Busch?
Interviewee: Oh, god. I’d sue them immediately. [Laughter]
Interviewer: Can you say why?
Interviewee: [Shaking his head] Fuck those guys ... there’s a camaraderie, like I said, um, which I think is a better ... term than brotherhood. Right? Like, it’s—just—within the industry, we’re all—we’re all in this together - so if Elysian had started releasing Rainfall, I’d rain as much fire as I could afford upon them.

His answer reflects the way the bimodal norm system sorts actions almost reflexively, as though it is principle, rather than a calculus of costs and benefits, that drives the decision. It may be a matter of commons sense that plaintiffs are likelier to pursue defendants with more resources, and the phrase “deep pockets” is one with which law students probably become familiar early on in law school. But the language above does not emphasize getting much more bang for the litigation buck, nor does it center on reward to the plaintiff. Instead, “raining fire” is a metaphor of punishment, not of reward and extraction. He does not say “I’d take them for all they are worth,” for example. Instead, this is about signaling through rhetoric a desire to make Big Beer suffer. Since we are talking about the same trademark behavior, and have simply changed the defendant, the imagined harm isn’t necessarily different, so the issue is not compensatory; it’s punitive.

On some level, it is impossible to know whether the rhetoric interviewees use to describe their imagined responses to scenarios I put before them is predictive of how they would actually behave, or instead mere bluster; it could also be the “party line,” a kind of refrain.

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192 Interview # 14.
reaffirming the speaker’s identity and values that is all bark and no bite. If so, it is still revealing even if it conveys different information. Consider this analogy. If, when I ask a bullied child what he will do on the playground the next time he crosses paths with his aggressor, he says “I’m gonna punch him in the face and make him wish he never picked a fight with me in front of all my friends!”, I might reasonably suspect he is speaking wishfully, and may be exaggerating his courage or his punching skills or both. Nonetheless, as a qualitative researcher, I will understand him to be telling me volumes about what he wishes for, what matters to him, and how he feels. In that spirit, the rhetoric interviewees use when they evoke bimodal norms suggests the existence of a system that reinforces group membership lines and reaffirms a commitment to the clear underdog. At a minimum, the bimodal norms system carries important expressive value, and it suggests that identity plays an important role in evaluating the strength and availability of legal rights in practice.

Part IV. The Purpose of the Study, and Some Implications for IP

This study seeks to describe and understand the attitudes, practices, and norms of those associated with craft brewing in Seattle.193 It relies on qualitative empirical methods, and it combines a phenomenologically-oriented approach to interviewing with a knowledge commons framework. Qualitative empirical research can provide extremely powerful insights into the lived experiences of a group or industry by giving voice to group members and looking for the ways their rhetoric and stories bring certain themes and subtexts to the surface. Those working in a larger context, such as IP law, can then use these stories as a means of reflecting back, for legal scholars and policymakers, on how law may align, or misalign, with the hopes and experiences of those whom the law purports to reward and incentivize.194 This Part summarizes the study’s basic structure and choices of method, which are elaborated infra page ___ in the Appendix, where I provide more detail about my methodology (or the theories behind my methods).195 It describes my aims and purpose, and situates the study in the larger context of questions and controversies in IP scholarship.

A. Summary of the Study’s Methods and Purpose

What follows summarizes how I determined how to define the population to be studied, how many interviews to conduct within that population, how to select interviewees, what to ask them, and what I did with my interview data. It also points to the data gathering I did beyond conducting formal interviews. It highlights a few areas in which emergent

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193 MAX VAN MANEN, RESEARCHING LIVED EXPERIENCE: HUMAN SCIENCE FOR AN ACTION SENSITIVE PEDAGOGY (1990) at 34.
195 It is helpful to distinguish method (the way I carried out the study) from methodology (the theory behind the method; “the philosophic framework, the fundamental assumptions and characteristics….., the view of knowledge”). Van Manen, supra note ___ at 27.
issues reshaped my methodological choices. For reasons of economy, feasibility, and depth of existing community, I chose to study craft brewers located within Seattle’s city limits. Even though at times this seemed an unnatural constraint, since informal knowledge transfers, friendships, and formal collaborations all crossed city lines. Still, attempting to capture all 150+ Seattle metro area brewers would have been impractical and limited the kind of study I could do, and certain Seattle-city concerns exist that helped confirm that this boundary made sense. Following best practices in qualitative empirical research methodology, I decided I would aim for 20-25 interviews, and to date, I have I conducted 22. I used a combination of methods to select interviewees, relying on alphabetical order, luck, snowball sampling, and networking. I used a preset list of questions (my “research protocol”); gained approval to conduct research on human subjects (or technically, exemption from review) through my university’s institutional review board process; and began with those preapproved questions. I varied the questions to some extent by the identity and role of the interviewee, since brewers and non-brewing owners had different experiences, which was true also of those charged with marketing, distribution or sales for a brewery, or those who had worked in the industry but were no longer affiliated with one particular brewery. I allowed some questions to emerge dynamically in interviews, as well posing those emergent questions in subsequent interviews. For instance, I learned more about gender, market dynamics, and other sociological factors that shaped power relations, I began to ask more about those. I then interpreted—or coded—the professionally-transcribed interviews, forming patterns and seeking to understand and characterize those patterns. Finally, I also immersed myself in the community to the greatest extent possible, attending festivals, visiting breweries in Seattle and around the country even when off the interview clock, and regularly reading news and scholarship about the industry.

Purpose of the Study. The purpose of the study is to gain greater understanding of the lived experience of craft brewers in Seattle, and to describe the way they make meaning of their lives and work. It uses qualitative empirical methods, in part because of the nuance and information those can yield, and in part because despite a burgeoning empirical research literature in IP, the emphasis has largely been on quantitative, not qualitative research, and more of the latter is sorely needed. Fieldwork—interviews and observation of creative and business communities in action—affords scholars an opportunity to understand what drives creators, and thus what serve as incentives and rewards. This fieldwork allows scholars to “reveal… on-the-ground practices of a range of previously ignored creators and innovators…” and in so doing, to “challenge … IP orthodoxy.” The orthodoxy, of course, is the utilitarian one undergirding the

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197 Silbey supra note __, at 287. (“There is a growing body of quantitative empirical work in intellectual property scholarship providing data on the collection and assertion of intellectual property but very few qualitative studies of the experiences of creators and innovators, be they individuals or organizations.”)
198 Id. at 288.
“incentives theory” in IP, which flattens creative experience and renders an unrealistic picture of how and why creators create. Instead, fieldwork goes to the source for evidence:

Short of living with and shadowing the inventors and artists, accounts from a cross section of diverse actors provide the most reliable evidence concerning purposes and interpretations of intellectual property for its producers. Given the choice between abstract theories based on hypothesized models of economics or organizational behavior and the experience of individuals in those organizations who make (or fail to make) a living from their creative or innovative work, lessons from experience are preferable.200

Lessons, and stories from lived experience, emerge vividly out of these extended conversations with brewers and others in the industry. With each one at 40-90 minutes, or anywhere from 50-80 pages of double-spaced transcribed interviews, the data coming out of this set of conversations are plentiful and full of common themes and values. Contradictions exist too, and those are interesting for the way in which they paint a picture of diversity and complexity in the craft brewing community.

The study is not testing a hypothesis or evaluating behaviors or attitudes; it is simply trying to understand and characterize a group’s way of representing its experiences. Instead of taxonomizing or seeking causal explanations, qualitative empirical research of this kind seeks to describe, understand and interpret lived experience through stories.201

In the words of one of the classic scholars in the field, “stories are a way of knowing.”202 Through interviews, people speak about their experiences in ways that offer rich narratives about the world, and their place in it.203 My approach borrows from phenomenology in its focus on lived experience, and in its emphasis on uncovering meanings, essences or qualities of the experience of the world, rather than demonstrating or rebutting empirical facts.204 Using this kind of phenomenological approach, researchers "attempt to uncover and describe … the internal meaning structures of lived experience."205

Phenomenology is, on the one hand, description of the lived-through quality of lived experience, and on the other, description of meaning of the expressions of lived experience… [T]he first one is an immediate description of the lifeworld as lived whereas the second one is an intermediate (or a mediated) description of the lifeworld as expressed in

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200 Silbey supra note __, at 288.
201 Van Manen, supra note __ at 4.
202 Seidman, supra note __ at 7.
203 Id.
204 Van Manen, supra note __ at 10.
205 Id. [Van Manen, supra note __ at 10.]
symbolic form.\textsuperscript{206}

The approach in this study thus asks interviewees to detail their daily lives, to share their attitudes about situations they know, and situations they can imagine (or often scarcely imagine), as I put hypotheticals before them and ask them to weigh the sorts of actions they might take. Above all, it is seeking information through the stories interviewees tell about their experiences, looking at symbolic meaning as one way to identify themes that unify and define Seattle’s craft brewing scene.

B. Some IP Implications

The data in this interview lend themselves to many different kinds of disciplinary IP and innovation-related investigations, and suggest the value of follow-on studies. The naming practices and trademark culture, for instance, merit standalone scholarly treatment given the frequency of litigation over beer names and the legal and economic interests involved.\textsuperscript{207} Further, the ways in which diversity and innovation are interdependent, or distinct from each other, is a question evidence drawn from the craft brewing industry could address. This Part offers an overview of some of the important questions these data pose, and some of the existing scholarly conversations with which they intersect. First, I discuss Seattle brewers’ attitudes and norms towards seeking and enforcing IP, in the context of IP revisionism. Next, I discuss the knowledge commons framework and the importance of group membership for innovation theory. I offer a few candidate theories to help interpret and explain some of the sharing practices that characterize Seattle craft brewing. Finally, I turn to theories of innovation that emphasize membership in a group and the role of market structure. There are sociological, psychological, economic, and legal reasons for which group membership, and the industry’s trade organization, need to be more fully understood in light of my interview data pointing to the role group membership plays in innovation in Seattle.

Seattle Brewers’ Attitudes and Norms Towards Seeking and Enforcing IP. The interview data collected from key figures in Seattle’s craft brewing community shows that there is a general disinclination to claim rights using copyright and patent law (even where those are available, and even in cases where there are sufficient resources for some legal assistance). At the same time, there is also a fairly widespread practice of seeking trademark registrations (state and federal), and some amount of secrecy employed, if informally, alongside the great openness and sharing that exists. The emergence of a national market for legal services for craft breweries supports the idea that brewers can and do turn to law, whether it is for corporate needs such as incorporation, dissolution, employment issues, or general contract matters.\textsuperscript{208} These lawyers definitely also provide IP counsel (mostly with respect to trademarks, and some copyright work).\textsuperscript{209} With respect

\textsuperscript{206} Id. [Van Manen, supra note __ at 25.]
\textsuperscript{207} See generally Winder, supra note __, and Chan Grinvald, supra note __, and Fromer and Beebe, supra note __, for discussions of trademark litigation and naming practices in craft brewing.
\textsuperscript{208} Craft beer attorney Candace Moon. Beer Sommelier; expert witness market.
\textsuperscript{209}
to trademarks, the very awareness of the difficulties of getting names in a crowded field, and brewers’ descriptions of their persistent attempts to find suitable names in spite of that difficulty underscores that Seattle brewers are not entirely IP-law-avoidant.

Brewers often care and think about their brand, labels, and beer names (or one or two of the three) a great deal. They seek to avoid overlaps to the extent reasonably possible, and they exhibit frustration towards those who do not respect their trademark priority and branding efforts. Some brewers will even speak somewhat wistfully about how they ought to be doing more with law, or think perhaps they should be, but aren’t sure. Nonetheless, when it comes to enforcing their rights, even those they have secured through federal registration, and even by brewers with lawyers at the helm, or regular guidance from outside counsel, craft brewers do display reluctance to use legal tools to enforce, preferring collaborative or peaceable means in many cases. The calculus of when to request that others steer clear of a mark, or cease using one that infringes theirs presents a puzzle for brewers who fear the backlash of enforcement, but who also have gotten the message from counsel that trademarks require some amount of vigilance.210 A larger-scale study could help map the extent to which the tension between acquisition and ownership of rights in craft brewing is something that inheres in the field nationally, or is unique to Seattle. Such legal scholarship could draw productively on existing sociological and historical studies of brewing communities.211 Anecdotal evidence in the news and from blogs about the litigation and trademark disputes that have taken place in the past few years suggests high costs to enforcement, nationally; whether true norms exist in other craft brewing communities, and how they operate on the ground are questions it would be valuable to answer in characterizing the field generally and in identifying any Seattle-specific nuances.

Recall that the data demonstrate that brewers’ rhetoric reflects a bimodal norms system. Craft brewers and Big Beer are treated in two different ways, and there is further gradation even with respect to craft brewers. In the rhetoric of Seattle industry participants, local craft brewers receive the most solicitude and national craft brewers are treated better than Big Beer but typically not as well as locals. I qualify my claim here by emphasizing brewers’ rhetoric: it would take follow-up inquiries to discover whether rhetoric matches behavior, but the rhetoric on its own has value for the meaning it carries and the attitudes it reflects about the importance of belonging to a community. The rhetoric also points to the cohesion created by having (what for many is considered to be) a common enemy in Big Beer, and a common “home team” in craft brewing. Accordingly, it would be helpful to have a survey or other empirically grounded tool probing for how many craft brewers in Seattle (and elsewhere) have faced trademark conflicts and what they did in those cases. The survey could be designed to discover whether rhetoric and practice align, whether size of brewery correlates with legal actions taken, and how often and under what sorts of circumstances brewers used formal legal

210 In some cases, this trademark knowledge comes from counsel who may have helped them register their marks, and in other cases it spreads through the community as general guidelines or received wisdom.
211 [Gatrell et al]
tools as part of their rights enforcement strategies. Of further interest would be whether any solutions brewers use in practice track Seattle craft brewing’s bimodal norms system.

**IP Revisionism.** This bimodal norms system adds another dimension to existing norms scholarship, as well as to the growing body of qualitative empirical work aiming to describe and characterize innovative ecosystems. In the past decade, a new body of scholarship has emerged, both within the legal academy and outside it, which I have termed IP revisionism. The IP revisionist approach is guided by a normative commitment to taking seriously values that may not always be commensurate with IP laws as currently structured, or as theorized in the dominant, utilitarian approach to IP. Whether IP revisionists focus on distributive justice, human flourishing, or other values, and whether they use empirical methods, or other means of identifying informal governance mechanisms, they share an interest in revisiting assumptions about creators and creativity. IP revisionists resist the default to law-and-economics frameworks for IP, and they conceptualize a more dynamic, holistic, pluralistic ecosystem for innovation. Satisfaction, play, friendships, and belonging are crucial in many innovative ecosystems, but before IP revisionist scholarship gained its current momentum, those important human elements were often underrepresented in the conversation, with its myopic focus on incentives.\(^\text{212}\) IP revisionism’s attunement to what creators actually need and want, requires more accurate descriptions of innovative environments, and in turn, can ultimately lead to better-fitting regulatory tools.\(^\text{213}\) IP revisionists care about the nitty gritty in creators’ lives; the things that they tell us matter to them. Julie Cohen has written that “[A]n account of artistic and intellectual creativity must situate creative practice within the material and special realities that constrain it.”\(^\text{214}\) To capture these realities, it is necessary to rely less on abstract models, and more on grounded research, despite the time it takes to generate such research. It is also imperative to move beyond a teleological focus on products, works, and outcomes to the conditions of production, the creative processes, as well as the relationships and lives of creators.\(^\text{215}\) A simple way of putting it might be: a detailed close-up of trees, with all their nuance, is ultimately necessary if to a robust, pluralistic understanding of the regulatory forest.

In studies of various communities, including roller derby teams, magicians, tattoo artists, pornographers, graffiti artists, fan authors, and photographers, these IP revisionist

\(^\text{212}\) Frischmann et al [Constructing Commons] supra note __, at 670. See also Cohen, Rosenblatt, Silbey, Sunder, Tushnet.

\(^\text{213}\) Darling and Perzanowski at 2. (“Collectively, these studies reveal that, despite its deep preoccupation with incentives, IP policy has embraced legal exclusivity without a careful examination of the conditions and motivations that define the creative environment. As a consequence, IP law displays a troubling insensitivity to the specific needs of particular creative communities, and it has historically disregarded non-legal regulatory tools that enable more granular, and potentially more effective, management of creative incentives.”)

\(^\text{214}\) Julie E. Cohen, Creativity and Culture in Copyright Theory, 40 UC DAVIS L. REV. 1151, 1177 (2007).

\(^\text{215}\) LAURA J. MURRAY, S. TINA PIPER & KIRSTY ROBERTSON, PUTTING INTELLECTUAL PROPERTY IN ITS PLACE, at 7 (2014) (“We wish also to recognize outcomes or products beyond cultural or intellectual property, such as community relationships, consolidation of professions, quality of life, and the education of [the] next generation[s].”).
scholars have offered thick descriptions of behavior that often did not align with the economic assumptions underpinning the dominant view within IP scholarship. In some fields, these norms offered an outright substitute for law either because law was ineffective or because it was unavailable (since IP doesn’t protect most forms of cuisine, and fashion, for instance). In other areas, identifying norms provided insights into what mattered to creators and what sorts of practices were deemed appropriate within the community, whether or not laws were available. For example, Emmanuelle Fauchart and Eric Von Hippel, in a qualitative empirical research study of French chefs, offered an alternative framing to show how implicit social norms might do as much as law to protect IP-like interests.

In another example of law-and-norms oriented scholarship, Christopher Sprigman and Kal Raustiala tackle the idea of copying as antithetical to innovation in a book-length study of different forms of creativity where copying increases innovation and the lack of laws preventing copying seem not to impede this creativity. In in The Knockoff Economy, they offer powerful evidence to undercut what they call the monopoly theory of innovation, which gives a monopoly interest to a creator for a certain period of time and restrains copying. The theory suggests that if copying is permitted, subsequent creators will have no incentive to create because their IP rights will have been eviscerated. Sprigman and Raustiala demonstrate persuasively that in fact many creative fields thrive on the competition afforded by copying, and low-IP protection. Their methods are to some extent sociological, and they are also quasi-economic, but they clearly step outside the law-and-economics methodological orthodoxy then dominant in accounting for IP protection for creative and scientific activity. In subsequent work, Sprigman and co-author Dotan Oliar study standup comedy and demonstrate similar norms against copying that inhere in community governance rather than in law. Their article gives voice to standup comics and helps continue to erode support for a primarily economic set of assumptions about IP and creative practice.

Many of these revisionist-oriented studies tended to be confined to a law review article, and to offer a single powerful contribution without claiming to offer a larger overview, or without a research agenda focused on that industry. In some cases, follow-on studies provided added context and depth to the original contributions. As the work gathered steam, more scholars began to explore norms as an arena worthy of serious scholarship, and qualitative empirical methods as a rigorous way to discover how creative communities behaved and how participants described their work and beliefs.

In Jessica Silbey’s seminal book, The Eureka Myth, Silbey trains attention less on the question of laws versus norms and more on the question of what creators want and need,

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216 Silbey, Tushnet, Strandburg.
218 See Raustiala and Sprigman, supra note __.
219 See Oliar and Sprigman, supra note __.
220 See Fagundes, Iljadica. Silbey. supra note __.
and whether that misaligns with what IP laws provide. Silbey argues that the efficacy and fairness of IP laws can only be assessed by understanding what truly motivated creators (in creative industries that copyright law might regulate, but also in scientific communities where patent might govern). In a series of longform interviews she conducted with 50 people in creative and scientific communities, selected, and interviewed, according to rigorous standards from qualitative empirical research methodology, Silbey produced a seminal study that demonstrates systematic misalignment between what creators typically want, and what IP law provides. Silbey’s study gave subsequent scholars a valuable new starting point that contrasted sharply with the starting premise articulated by law and economics, and her work helped confirm that the IP revisionist conversation was legitimately underway.

IP revisionism inspired this study: if Silbey’s work had revealed fundamental misalignments in innovative practices and IP law, but drawing only from participants within driving distance of Boston, what might an innovative ecosystem in the Pacific Northwest look like? Broadening beyond Silbey’s copyright and patent orientation to include trademark and trade secret might also add further nuance, and narrowing to a single industry characterized by its innovation and with some clear legal “hooks” connecting to IP could provide focus that increased the study’s feasibility.

Ultimately, it is my hope that the data collected in my interviews provide insights into how cooperation appears to advance the state of knowledge in a field, and how it fosters innovation. The study builds on norms scholarship and seeks to contribute to the IP revisionism that seeks grounded research about creative practices. And indeed, interview after interview demonstrates that informal norms, operating in a knowledge commons context, can provide an efficient and innovation-promoting alternative, or supplement, to legal rules: in a community built on trust and respect, and defined with particular group boundaries like those of craft brewing, the payoffs of norms are significant. Norms can be more easily customized to fit a situation, and they offer a streamlined (low-cost, no-lawyer) alternative to joint ventures and collaborations. Norms often require certain conditions to be present though; sometimes this involves belonging to a group or guild; at other times a crucial condition may be non-commercial uses. The moral attitudes and norms of the community also matter, and may not track law; where they diverge, this distinction puts pressure on which governance mechanism operates, and why. In some sense, the norms framework did not fully capture the conditions and practices observed in Seattle’s craft brewing community, especially insofar as norms are sometimes understood to signal the lack of IP or a preference for norms over laws. It is important to reemphasize that governance by norms through a commons framework does not preclude use of legal tools, and in craft brewing, trademark law can and often does play an important role. That multilayered approach to governance—some norms, some laws, with a set of knowledge-sharing commitments at its core—suggests the value of using the knowledge commons

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221 THE EUREKA MYTH: CREATORS, INNOVATORS, AND EVERYDAY INTELLECTUAL PROPERTY (STANFORD 2014).

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framework whose hybridity and sometimes-open, sometimes-exclusive nature provided a better fit.

The Knowledge Commons Framework, Sharing, and Belonging.

The knowledge commons framework first adopted for the information economy has generated lively debate by some of the top legal minds in the academy today. The pioneering work by Frischmann, Madison, and Strandburg has opened the way for numerous case studies in scientific and creative fields, as well as for historical work digging into the history of newsgathering, among many other topics. The power of the knowledge commons frameworks is to enable nuanced analysis of communities where rights and openness overlap, where both norms and law play a role. The knowledge commons framework aims to allow researchers to identify characteristics of productive knowledge governance mechanisms that diverge from traditional or expected ways of governing, sharing, and licensing information and knowledge. Ultimately, using the knowledge commons framework may enable researchers to provide generalizable results about the way knowledge transfers and sharing may be systematized in communities where the standard exclusivity offered by IP is unavailable, not used to the full extent available, inefficient, or simply not optimal for the needs and preferences of the community.

For certain kinds of communities, using the framework of the commons enables researchers to dispense with the typical binarism of either market and law (exclusivity) or social norms (openness). The commons may be defined as an umbrella idea that refers to a broad array of possible institutional arrangements for sharing information and knowledge (that is, products and sources of human culture) and for sharing legal rights that might pertain to that information and knowledge.” As distinct from total or outright openness in knowledge-sharing, the commons framework enables discussion of “structured openness, with formal and informal institutional mechanisms in place to manage or govern that openness.” The knowledge commons research framework reflects acknowledgement that humans create structures to govern knowledge, and that understanding that governance in terms of both informal norms and legal rules provides a richer and more accurate account than the polar property-oriented accounts of exclusivity vs. openness.

Sharing may be one of the most fundamentally constitutive parts of belonging to the community of craft brewers in Seattle, and interview evidence suggests that it plays an important role in the vibrancy and success of local craft brewing. Michael Madison has

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224 Id. at 2, 5.
225 Id. at 2, 5.
226 Michael J. Madison, Galaxy Zoo at 210.
227 Id. at 210.
228 Id. at 211.
229 Strandburg response to Oliar and Sprigman.
demonstrated that there is a spectrum of kinds of knowledge-sharing among scientific research, from exclusivity (patent’s domain) to sharing (open science whose norms emerge from the discipline rather than business).\textsuperscript{230} Craft brewing in Seattle displays a similar spectrum of knowledge sharing, which is not amenable to IP’s exclusivity framework but does not fully map onto open domains either. The remarkable extent of sharing among Seattle’s craft brewers may be partially explained by various theories of sharing including reciprocal sharing, asymmetrical sharing, low-stakes sharing, and hedonic sharing.\textsuperscript{231} It is also helpfully illuminated by theories of “coopetition” drawn from corporate and antitrust scholarship, and would benefit from further treatment.\textsuperscript{232} But as a starting point, it is important to note the centrality of craft brewers’ sharing, and their commitment to an idea that certain resources are to be jointly held, or shared through exchanges that treat knowledge as a kind of commons. Join the group? Get access to the commons. Sharing is not simply a mechanism of knowledge transfer (though it is that, and promotes innovation, as such). It is also one of the constitutive acts of belonging to the craft brewing community.

Similarly central to what brewers do is providing the opportunity for people to convene, relax, and enjoy a pleasurable product. Many interviewees speak of the satisfaction derived from watching people in their taprooms enjoy their beer, and of the joy they experience in creating community through beer. They speak passionately about certain personal and community values having to do with creativity, science, ownership, innovation, consumer demand, and knowledge-sharing. And nearly unanimously, they talk about the importance of belonging to a community they believe in, as distinct from being elsewhere in the industry. Translated into IP terms, and drawing on work by Betsy Rosenblatt, we might say that they identify personhood interests as central to their craft.

Human flourishing demands not only creation, but also the ability to connect with others to form communities of interest. These personhood interests are closely linked, since communities often develop around creative endeavors; people define themselves not only by what they make but by association with others who make similar things.\textsuperscript{233}

Many—perhaps most—interviews reflect the interconnectedness between creative production and community membership. Brewers express gratitude for how others have shared, and admiration for the skills and friendships of fellow brewers.

Before launching this study, I had not anticipated how much brewers would emphasize the sense of human connection in their work, and their belief that craft brewers were common kin. Nor would I have guessed how personally the breweries have taken the

\textsuperscript{230} Michael J. Madison, Commons at the Intersection of Peer Production, Citizen Science, and Big Data: Galaxy Zoo, in [Anthology] at 209.
\textsuperscript{231} [Provide further explanation here]
\textsuperscript{232} []
wave of acquisitions that have affected the industry, including in Seattle, with ABInBev’s purchase of Elysian. Describing the effect of that change, one interviewee sought to rationalize the choice to sell, wanting not to judge and citing the need for cash flow:

I think it’s hurting people’s souls, you know...I think it’s just, like, people feel betrayed. [Laughter] ... there’s a lot of investment companies who are buying breweries right now, but these breweries need cash flow. How do you fault anyone for trying to improve their business? I mean, you really can’t. You can’t be judgmental about that kind of thing. But when it comes to, yeah, the AB InBev acquisitions and [unfair pricing and] the other stuff, and now suddenly,. ... It’s just the folks that you were hanging out and having beers with, you know, suddenly, they’re being associated with, you know, mobsters—and bean counters kind of like, where does that leave us, man? You know. … Like, we were buds, and now you’re the man— So I think it's—the industry where people do this because they love it, and now your - your - your psyche is being [laughter] hurt by what’s going on.  

Despite the effort to contextualize the sale to ABInBev, the interviewee can’t help revealing judgment for the decision to associate with “mobsters” (referring to pay-for-play and other unfair trade practices) and “bean counters” (referring to the perception that once a brewery is acquired, craft brewers who are told they will be allowed to continue just as before will find themselves accountable to business-oriented, not beer-oriented, constraints. The impact of this causes pain to “people’s souls” and “psyche,” a kind of betrayal that causes a self-conscious laugh both times it’s mentioned. The issue is not merely one of boundaries drawn by contract, or by boundaries set by a trade organization, in other words. It is an issue of belonging, and it defies, or would be overlooked by the standard IP account. Yet this kind of belonging can be central to motivating and advancing innovation, and is properly considered as part of scholarly considerations of IP and creativity. Rosenblatt has shown that a sense of belonging can foster innovation, and as such, it deserves serious consideration in any study of creative ecosystems and their practices and norms.

Beyond the role that belonging plays in fostering creativity, it deserves deeper consideration in craft brewing for the ways it facilitates informal arrangements such as collaboration beers, name-sharing, and knowledge-sharing. Lastly, belonging is now—as of July 2017—formally denoted through the Brewers’ Association’s new certification mark. There may be reason to consider this development with concern, lest it play an anticompetitive role rather than an authenticating role. With such a recent

234 Interview # 6.
235 See generally Elizabeth Rosenblatt, Belonging as Intellectual Creation, 82 Mo. L. Rev. 91 (2017) (“belonging motivates the creation of more and better stuff and promotes stable management regimes for how people use, copy, and attribute stuff within creative communities.”)
237 Margaret Chon, Marks of Rectitude, 77 FORDHAM L. REV. 2311 (2009).
development, it is difficult to assess what role it could play; most interviewees did not have the opportunity to weigh in about it given the timing of this announcement. The choice to adopt the mark and its importance for consumers will take time to evaluate. Still, the certification mark emblemizes the importance of belonging, and it calls for greater attention to the role a central industry association plays in shaping the market, and the culture, of innovative industries.

Conclusion

Seattle’s craft brewing community possesses distinct features in the form of industry practices, attitudes, and norms that may provide insights for those researching innovation policy and IP, especially those interested in knowledge transfer and collaborative creativity. Some of these features echo practices and aspirations of the larger craft brewing community in the United States, while others may prove to be unique to Seattle, perhaps reflecting its identity as a city built on a business infrastructure for technologists and innovators, embedded in a state with an abundance of hops and a long and storied brewing tradition. As noted at the outset, this dataset cannot establish the prevalence of attitudes and practices noted here, nor can these be generalized to the larger craft brewing community. But that’s not the point.

Instead, this study speaks to the lived experience of Seattle craft brewers, and tries to make sense of how they think and talk about their work. The formal interviews I conducted in Seattle provide rich details and a window into one location of commercial craft brewers, and some of the practices, attitudes, and norms observable in this community. The study captures a local snapshot of an industry poised on the brink of great change due to growing market demand, changing consumer tastes, and industry consolidation as reflected by a recent wave of mergers and acquisitions. Because of those market-wide changes, whose effects are reflected in my data, Seattle may provide insights with broader applicability. At a minimum, because of the references to the “rising tide” motif throughout the interviews, it is clear that Seattle craft brewers are aligning themselves with the rhetoric and communitarian philosophy of the larger craft brewing movement, and with the giants in craft brewing history, who were known for referring to the rising tide and for demonstrating generosity and openness.

Craft brewing offers the opportunity for scholars to deepen our collective understanding of how belonging plays a role in innovation. More grounded research is needed to continue to map craft brewing’s knowledge-sharing practices and norms, and I suspect that work will be most powerful when anchored in specific sites. More work is also needed to develop a fuller picture of interfirm behaviors and market governance, as well as intrafirm governance. To the extent that IP plays a significant role in this industry, it is worth understanding how it does so in the contexts of market structure as well as local knowledge-commons ecosystems in which norms, relationships, and non-economic motivations may map better than law alone onto what craft brewers do, and want, and

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need. I leave it to future thirsty researchers to build on this work by conducting qualitative empirical research in their own local craft brewing communities.
Appendix I: Purpose and Methodology

A. Defining and Sampling the Study’s Population

Target Population. For qualitative empirical research studies based on interviews, a key initial step is determining what population will most helpfully contribute evidence, that is, will serve as a primary data source. I defined the boundaries of the population I would interview based on pragmatic factors including cost, access, efficiency, and abundance of interviewees.\(^{239}\) I knew I wanted to study craft beer in Washington State, and before setting out, I didn’t know precisely how many breweries existed here in Washington. At over 300, that number is daunting, unless the method of inquiry were to be purely a survey, sent out in a batch of communications, and not requiring travel, coordination, and time to meet each interviewee. Even narrowing my sights to Seattle revealed that there were many breweries: in the greater Seattle metropolitan area, around 150-170 breweries are in operation, likely more than would be needed to reach “saturation,” depending on what I hoped to gain.\(^{240}\) Since I hadn’t planned simply to send a survey—which would be feasible with that number or an even greater number—I had to rethink my target population. To make the study more feasible, I focused on the set of 55-60 breweries located within Seattle city limits. Speaking with breweries in Seattle reaffirmed my decision in certain respects since many “beer tourists” come to Seattle with the plan of exploring the close-in local breweries; the same is true of cruise tourists.\(^{241}\) I also interviewed a handful of brewers outside of Seattle’s city limits, either because they qualified under rules I used to determine whom to interview (discussed infra) or because it seemed potentially of interest to hear whether just outside Seattle some different attitudes or constraints might exist.

Sampling Size, or Number of Interviewees. Most commonly, the methodology literature for qualitative empirical research states that no single number can be prescribed for all studies.\(^{242}\) The “right” number of interviews depends on a study’s goals, and needs to be calibrated relative to the researcher’s capacity, methodology, and population.\(^{243}\) To conduct an in-depth case study, a single brewery or brewer could be interviewed multiple times, perhaps across a period of time. To conduct an ethnographic study, one might aim for upwards of 35 interviews. The heterogeneity of the population matters, too. The more homogenous, the lower the number of interviews will likely need to be to (some scholars advise 4-12, as against 12-30 for a heterogeneous population).\(^{244}\) For semi-structured interviews, depending on their depth, and whether or not one repeats interviews with the same interviewees, prescriptions may run from 5-25 interviews.\(^{245}\) There are limits to all

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\(^{239}\) Brown __ (2006).

\(^{240}\) Interviews # 18, 21.


\(^{242}\) Mark Mason, Sample Size and Saturation in PhD Studies Using Qualitative Interviews, 11 FORUM: QUALITATIVE SOCIAL RESEARCH 1 (2010).

\(^{243}\) Guest, supra note __.

\(^{244}\) Id.
the approaches for determining how many participants to interview, and potential concerns with how to select those to interview.\textsuperscript{246} I interviewed people who met at least two of the three following criteria: (a) people who founded, owned, or were currently employed at craft breweries; (b) people who had verifiably been employed in the brewing industry in Seattle within the past few years, or (c) people who were mentioned as significant during interviews with people who met either (a) or (b). The population is relatively homogeneous, and all selected had previously met at least two of three selection criteria, thus providing definitional structure for the group I would likely be interviewing. Ultimately, I decided to attempt to interview 20-25 of the breweries, on the theory that reaching roughly half the breweries in operation was likely to achieve a reasonable level of data saturation, and that 25-40 or hours of interviews were likely to provide a deep and detailed body of evidence.

**Sampling Frame, or Selection of Interviewees.** In order to determine whom to interview among those breweries who fit my basic criteria for exclusion, my research assistant and I made, cross-referenced, and ordered lists of local breweries. A non-probabilistic (or non-random), purposive sampling approach was used, that is, my interviewees were not randomly selected. Sampling purposively helps make research manageable, saves costs associated with research of this kind, and increases accuracy and efficiency.\textsuperscript{247} To minimize the bias of “judgment sampling” that might skew the way I selected interviewees, I adopted several strategies.\textsuperscript{248} First, I tried to minimize the impact of this not insignificant time demand on interviewees. One thing that helped was taking 18 months, thus minimizing scheduling constraints that might have prevented participation of certain of the busiest participants. I traveled to them and tried to fit interviews around brewers’ working hours or needs and preferences. Second, I selected interviewees using multiple strategies, including access and diversity. With respect to access: my first two interviews were close to campus or in some way connected to the University of Washington, which made the interviewees more receptive to my request. This proximity should not be understated: interview requests like these are a form of cold calling, coming as a stranger to ask for a favor in the form of two hours of time, in an industry where time means a great deal and most participants already work long hours. Also, for an industry with little confidence that law, or lawyers, do anything but spell trouble and increase expenses, coming from a law school was probably an additional barrier, and getting interviews was, especially initially, a challenge. Another problem was that many brewers when speaking face to face would agree to meet, consistent with the collegiality in the field and the desire to be helpful, which I truly take to be genuine. But getting them to pin down a time for interviews was often much harder (consistent with the enormous demands on the time of brewers and owners in small breweries, and also in part due to scheduling constraints of my own that sometimes made finding mutually workable times difficult).

\textsuperscript{246} Guest, Galvin, and others.  
\textsuperscript{247} Brown __ (2006).  
\textsuperscript{248}
With respect to diversity, I used multiple channels of communication: I sent emails to a number of brewers, working down in a particular order form a spreadsheet. (To specify the precise order selected might risk deanonymizing participants, but the order was followed for the first group of interviews.) Next, I attended brewers’ festivals, introducing myself, leaving cards and letters explaining the contours of my project, and seeking cards and contact information. Typically, I followed up by email, and sometimes phone, or brewery visits, or a combination of those. That yielded a number of additional interviews. Similarly, as noted below I attended an industry organization meeting that enabled introductions and facilitated further interviews. I regularly visited breweries and left information about my study along with an invitation to be in contact, though that approach had a lower conversion rate. Finally, I spoke with people in the industry (some of whom I had interviewed) and requested introductions. As might be supposed, this was the most successful approach to gaining the trust—and earning the time—of interviewees.

**Sampling Bias.** As my list of interviewees grew, I continually cross-checked it for things like size of brewery, seniority in the field, geographic location in the city, identity of owner (by gender, race, and ethnicity) and I attempted to create a balance within the constraints of the population. This combination of approaches meant that while I sought out brewers within the total list of Seattle brewers, some amount of order, some amount of industry prominence and participation, and some amount of serendipity, all contributed to comprising the list of interviewees. After a number of interviews had been with men only, I went in search of women in the industry. Ultimately, I interviewed a number of women, who did not all have the same perspective on the industry, but who affirmed that it was often difficult for women to break into brewing—for reasons both physical and sociological. As for size, I interviewed three of the largest breweries, three with a claim to being the smallest breweries; people with 15 or more years of experience in the field, people with three to five years’ experience, and one with five months’ experience (a quick study!) I interviewed breweries and brewpubs with claims to being the oldest and newest (or close to those superlatives, I’ll say, to preserve anonymity). I spoke with brewers about race and ethnicity, and three or so of my interviewees were of color, as far as I was aware or as far as was discussed. We did discuss racial bias, but ultimately it seemed like a lower priority issue for brewers (even those of color) than gender, size of brewery, and other forms of hierarchy in the field. With this cross-checking, I was seeking to neutralize biases as much as I could.

This phenomenological approach acknowledges the subjectivity and bias of the interviewer, and demands that the researcher return to their own goals and framing self-critically, and regularly. I routinely acknowledged that I was “in the tank,” for craft beer, and at some point I would reveal that I disapprove—as an IP scholar as well as a member of the craft community—of some of the methods I see big beer using: they strike me as anticompetitive, and sometimes deceptive. Therefore, I had to be careful in how I framed my own positionality, and only raise this clear bias for craft beer and against big

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249 Van Manen, *supra* note ___ at 11.
beer as part of an exchange in which my interviewees had themselves already expressed a view on the topic. At times, empathizing and providing my own examples, or sharing my genuine dismay, appeared to allow interviewees to relax inhibitions and provide details or opinions they had seemed reticent about, or might not have opened up to me about, not knowing my bona fides. Where such antipathy was not expressed by interviewees first, I kept my views to myself (and found the divergence from what I was finding to be a consensus to be of great interest).

I also discovered that my study was unintentionally biased towards institutions and against individuals. Initially, I had planned to interview only people currently employed by craft breweries within Seattle city limits. I realized soon enough that this choice reflected a flaw in the study’s design: to the extent there were social or economic factors excluding from participation those who wished to be employed at these breweries but had not succeeded in this wish, or who had not remained employed there, I might be missing an important part of the story of craft brewing in Seattle. For instance, some women feel excluded by the culture of some breweries in Seattle, and either leave the city to work elsewhere, or leave the field to do something else. Others left after injuries from lifting or other brewing-related activities had, over time, forced them to seek work in other industries. I interviewed a few such “outsiders” who nonetheless had had significant experience in Seattle’s craft brewing experience that they could discuss in detail.

B. Data Collection and Analysis

**Questions Posed.** In my formal interviews, I used a semi-structured, open-ended research protocol with a single-spaced page of questions—around twenty—and various prompts that allowed interviewees to respond freely and raise new ideas and questions too. These questions were grouped in clusters pertaining to background, daily practices, ideas about ownership, views about the industry and competitors, views about the law, and so on. The protocol was intended to allow open-ended conversation and emergent discussion but also to facilitate in-depth conversation that would go beyond surface-level accounts. Some interviews proceeded fairly straightforwardly down the path of those questions. However, the interviews adapted to the identity of the interviewee (different questions were appropriate for brewers versus owners, brand managers, or service and sales people, for instance). The questions also began to adapt to the pressing issues in the field as those rose to the surface in interview after interview. For example, my original protocol had no questions about gender, nor did it explicitly ask about industry consolidation and “Big Beer.” But as I became attuned to the concerns of my interview population, these questions became among the most important ones to pose. Often, I discovered that the questions I had imagined in my office, in conversation with other academics and my research assistant, bore little relevance or interest for my interviewees. Pretty much to a one, my interviewees informed me there was no copyright in recipes, and a few asked why I was studying IP in craft brewing at all, thus prompting that I provide additional

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background for the study.

**Data Interpretation.** After the interviews were conduct and transcribed through a professional transcription service, I read, reread, and coded them. Often I went back and listened again to parts, or all of an interview. Following the grounded theory approach to qualitative empirical research, I created research memos for each interview.\(^{251}\) Grounded theory refers to a form of qualitative empirical research in which researchers collect evidence and then work through that evidence interpretively multiple times, seeking to identify themes that emerge, as opposed to merely taking at face value the interviewees’ literal answers to the exact questions listed on the research protocol, and using that narrower scope to define the field of inquiry.\(^{252}\) In many respects, the kind of interpreting done in grounded theory resembles forms of close reading in literature, in which the texts—interview data—can be read and reread, sometimes against the grain or in ways that reflect deeper or ironic meanings.

This phase of my study focuses on interpretive coding, or discourse analysis.\(^{253}\) This mode of inquiry considers how words are used and what expressions mean; it also draws on my field notes, that may detail how people tell particular stories, emphasizing meanings in context and through body language and other social cues. Discourse analysis is nuanced reading, focusing on meaning not on hypotheses or generalizations, and not concerned with statistical analysis.\(^{254}\) It is less concerned with facts in the world and more in experiences of purported facts: “It is not the temperature of the room that is important, but the meaning the interviewee ascribes to the feeling of warmth or cold,” whatever the actual temperature may be.\(^{255}\) Just as you and I may have different feelings about the same weather, the meaning of warm or cold to a given person may surface during an interview, and it is this sense of significance that discourse analysis seeks as it attaches meaning to particular words and phrases, and to their deliver.\(^{256}\) We make meaning of our lives through stories; in a fundamental way, these stories make us who we are.\(^{257}\) These stories emerge not through quantifiable data, but through interviews and other modes of qualitative evidence.

A subsequent study—dependent on grant funding for which I have applied—will use software to quantify and further analyze this rich collection of data to understand it from


\(^{252}\) **ANSELM STRAUSS & BARNEY GLASER,** *THE DISCOVERY OF GROUNDED THEORY: STRATEGIES FOR QUALITATIVE RESEARCH* (1967); see generally Silbey, *supra* note __, and Charmaz, *supra* note __.

\(^{253}\) **JOHNNY SALDAÑA,** *THE CODING MANUAL FOR QUALITATIVE RESEARCHERS* (2013).

\(^{254}\) Galvin, *supra* note __ at 2 (internal citation omitted).

\(^{255}\) *Id.* [Galvin at 2]

\(^{256}\) Denzin, 68 [23].

\(^{257}\) Silbey, *supra* note __ at 289 (internal citations omitted) “[S]tories people tell and the language they use to describe their work… are important in and of themselves. Stories are political insofar as they are justifications for the status quo or change. Language and narratives participate in the constitution of consciousness and community. The repeated use of words, phrases, and stories reify concepts, categories, and expectations that structure our identities and our relationships in society.”
a different vantage point. In addition, a research assistant will participate in future analysis, to minimize bias. In both phases of interpretation, bias is inevitable, and my interpretations are necessarily subjective. Part of the strength of qualitative approaches lies in the ability of a researcher to engage personally with participants and draw them out conversationally, as one does when empathizing, sharing experiences, and indeed, raising a glass—all things that inevitably import some subjectivity.

**Additional Data Gathering.** In addition to the formal interviews I conducted, I conducted informal interviews and participated in the craft brewing scene as a member/observer. I attended two brewing festivals, speaking with many brewers and consumers there, and I attended two meetings of the Pink Boots Society (dedicated to women in the brewing industry). Whenever I visited a location that sold or served craft beer, I documented what I was seeing with photos of tap-lists and beer selections available on shelves, and by taking notes as I conducted informal interviews or collected impressions after conversations with bartenders and brewers. I supplemented my own observation with extensive documentary research, reading industry news and blogs; listening to podcasts; and reading extensively in the academic literature on craft brewing and the history of brewing more generally. I maintained a research diary collecting these notes, in addition to the research memos I prepared following interviews.

Finally, I spoke—informally—with many brewers and brewery employees throughout Washington state and around the country (in Chicago, Grand Rapids and Whitehall, Michigan, Maui, Los Angeles, New York City, Palm Springs, Portland, and San Francisco) to try to triangulate information with what I was hearing in Seattle and what I was reading about craft brewing generally. These cities were not selected for their representative status but reflect my travel schedule for work and leisure, so I make no prevalence claims about the evidence I gathered there. However, it was of note that in those communities, there were clear signs of some of the phenomena I heard described repeatedly in my interviews, including establishments where the tap handles offered only non-craft (or only craft) beers; a strong commitment to local beers that, anecdotally, appears to be more pronounced than I can recall its ever being in my lifetime; equally strong antipathy towards “Big Beer” (and in one grocery store in Hawaii, stickers differentiating local from non-local beer, even where the non-local beer is called “Kona,” for which its maker is facing litigation).

In these cities, I was also told that it was rare for women to own breweries, and rarer still for women both to own and to be head brewer. A number of the other workplace-oriented phenomena brewers in Seattle described were also present.

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